RECORD, CASE No. 13,411.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1891.

TERM No., 282.

S. W. WASHINGTON, ADMINISTRATOR OF HENRY W. CASTLEMAN, DECEASED, ET AL., APPELLANTS,

vs.

H. L. OPIE.

APPEAL FROM THE DISTRICT COURT OF THE UNITED STATES FOR THE DISTRICT OF WEST VIRGINIA.

FILED OCTOBER 24, 1888.

RECORD, CASE No. 13,411.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1891.

TERM No., 282.

S. W. WASHINGTON, ADMINISTRATOR OF HENRY W. CASTLEMAN, DECEASED, ET AL., APPELLANTS,

vs.

H. L. OPIE.

APPEAL FROM THE DISTRICT COURT OF THE UNITED STATES FOR THE DISTRICT OF WEST VIRGINIA.

INDEX.

	Original.	Print.
Caption	1	1
Subpœna	2	1
Bill of complaint No. 1	3	2
Bond for costs	15	6
Order of March 8, 1881, as to answers, &c.	16	7
Order of March 21, 1882, submitting cause, &c.	18	7
Answer of Mary Meade	20	8
Bill of complaint No. 2	23	9
Demurrer, plea, and answer of Henry W. Castleman	35	14
Answer of S. W. Washington, administrator, &c.	48	19
Order of September 7, 1886, as to motion to dismiss, &c.	49	20
Demurrer, plea, and answer of Henry W. Castleman	50	20
Evidence for complainant	64	26
Deposition of H. L. Opie	64	26

JUDD & DETWEILER, PRINTERS, WASHINGTON, D. C., NOVEMBER 19, 1891.

	Original.	Print.
Evidence for defendants	95	38
Deposition of James Sinclair	95	38
Wm. D. Smith	98	39
Henry W. Castleman	100	40
Robert H. Butcher	111	44
Henry W. Castleman (continued)	113	45
Order of September 30, 1887, reviving cause, &c.	115	45
Order of September 30, 1887, reviving cause, &c.	116	46
Answer of John N. Opie	120	48
Notice of lien, filed November 26, 1887	124	49
Deed of trust between Henry W. Castleman and Robert Y. Conrad, January 1, 1856	125	50
Deed of release between Robert Y. Conrad and Henry W. Castleman, September 7, 1865	130	52
Commissioner's notice	134	54
Order of April 17, 1888, allowing appeal, &c.	136	54
Exceptions to commissioner's report	137	55
Commissioner's report	138	56
Order of reference to F. W. Brown	143	58
Report of F. W. Brown, commissioner	144	59
Decree of April 19, 1888	161	69
Order of April 20, 1888, for sale, &c.	167	72
Appeal bond	168	72
Clerk's certificate	171	74

1 RECORD.

UNITED STATES OF AMERICA, }
District of West Virginia. }

Proceedings in chancery before the district court of the United States for the district of West Virginia at the judiciary building of the United States, in the city of Wheeling, on the — day of ——, ——, and in the 113th year of the Independence of the United States of America:

Be it remembered that heretofore, to wit, on the 4th day of December, 1880, came H. L. Opie, by his counsel, and sued out of the clerk's office of said court a writ of summons in chancery against Henry W. Castleman, Nannie S. Opie, in her own right and as administratrix in the State of Virginia of Heirome L. Opie, dec'd, and Thomas Opie, in his own right and as administrator in the State of Virginia of Heirome L. Opie, dec'd; John N. Opie, and Mary Meade and —— Meade, her husband, which writ is in the words following, to wit:

2 The President of the United States of America to Henry W. Castleman, Nannie S. Opie, in her own right and as administratrix in the State of Virginia of Heirome L. Opie, dec'd; Thomas Opie, in his own right and as administrator in the State of Virginia of Heirome L. Opie, dec'd; John N. Opie, and Mary Meade and —— Meade, her husband, citizens of the State of West Virginia, Greeting:

We command you that on the first Monday in January next, at rules to be held in the clerk's office of the district court of the United States for the district of West Virginia, at Wheeling, laying all other matters and excuses aside, you do cause an appearance to be entered for you in said court to a bill in chancery filed against you by H. L. Opie, a citizen of the State of Kentucky, and that you do answer concerning such things as shall then and there be alleged against you and observe what the court shall allege in this behalf upon pain of an attachment issuing against your person and such other process of contempt as the court shall award.

Witness the Honorable John J. Jackson, judge of the district court of the United States for the district of West Virginia, at Wheeling, this 4th day of December, 1888, and in the 104th year of the Independence of the United States of America.

JASPER Y. MOORE,
Clerk D. C. U. S. D. W. Va.

MEMORANDUM.—The defendants to enter their appearance in the suit mentioned in the foregoing writ in the clerk's office therein mentioned on or before the day on which the writ is returnable; otherwise the bill will be taken *pro confesso*.

JASPER Y. MOORE,
Clerk D. C. U. S. D. W. Va.

3 And upon another day, to wit, on the 4th day of December, 1880, the said H. L. Opie filed his bill of complaint, which bill is in the words and figures following, to wit:

Complainant's Bill.

In the District Court of the United States for the District of West Virginia.

H. L. OPIE, Complainant,
vs.
HENRY W. CASTLEMAN, NANNIE S. OPIE, in Her Own Right and as Administratrix in the State Virginia of Heirome L. Opie, Dec'd; Thomas Opie, in His Own Right and as Administrator in the State of Virginia of Heirome L. Opie, Dec'd; John N. Opie, & Mary Meade, Defendants.

To the Hon. John J. Jackson, judge of the district court of the United States for the district of West Virginia:

Humbly complaining, showeth unto your honor your orator, H. L. Opie, that your orator is a non-resident of the district and
4 State of West Virginia, and is a citizen of the State of Kentucky and a resident of the town of Covington, in said State of Kentucky, where he has resided for some years past; that the said defendant Henry W. Castleman is a citizen and a resident of the county of Jefferson, in said State and district of West Virginia; that said Thomas Opie is a citizen and resident of the State of Maryland, and residing in the city of Baltimore; that said Nannie S. Opie and John N. Opie are citizens and residents of Augusta county, in the State of Virginia, and that said Mary Meade and —— Mead, her husband, are citizens & residents of the town of Danville, in the State of Virginia, in Pittsylvania county; said Mary married said —— Mead a few years since; that Heirome L. Opie, now deceased, was the husband of said Nannie S. Opie and the father of your orator and of said defendant- Thomas Opie, John N. Opie, and Mary Meade; that in his lifetime the said Heirome L. Opie, by deed dated the 1st day of January, 1856, and of record among the land records of said county of Jefferson, in the district and State of West Virginia, a certified copy of which is herewith filed as Complainant's Exhibit A and as part of the bill, conveyed to said defendant Henry W. Castleman the several tracts of land therein particularly described, viz., one tract on
5 the west side of the Shenandoah river, in said county of Jefferson, containing 596 acres, more or less; one other tract on the east side of said river, in said county, containing 419 acres, more or less, all of which said land be in said county of Jefferson, in the district & county of West Virginia aforesaid; that the consideration named in said deed for said land — the sum of $41,733 66½ cts., which said deed recites as paid and secured to be paid; that at the time of the purchase of said real estate by said Castleman from said Heirome L. Opie the said Castleman paid *off* said purchase-

money in cash the sum of 10,000 00 and executed to said Heirome L. Opie his eight several single bills for the defer-ed payments, each dated the said 1st January, 1856, one payable on or before 1st January, 1857, for $5,000.00, bearing interest from date; one payable 1st January, 1858, for $5,000.00, with interest from date, payable annually; one payable 1st January, 1859, for $3,622.27¾, with interest from date, payable annually; one payable 1st January, 1860, for $3,622.27¾, with interest from date, payable annually; one payable 1st January, 1861, with interest from date, payable annually, for $3,622.27¾; one payable 1st January, 1862, for $3,622.27¾, with interest from date, payable annually; one payable 1st January,
6 1863, for $3,622.27¾, with interest from date, payable annually; one payable 1st January, 1864, for $3,622.27¾, with interest from date, payable annually; that to secure the payment of said single bills and the interest thereon the said Henry W. Castleman executed a deed of trust to one Robert Y. Conrad, as trustee, which deed of trust was admitted to record among the land records of said county of Jefferson on the 2nd day January, 1856, certified copy of which is herewith filed as part of the bill, marked Complainant's Exhibit B; that soon after the transaction aforesaid the said Heirom L. Opie removed from said county of Jefferson to the county of Augusta, in the State of Virginia, and there he resided until the time of his death, which took place the summer or early in the fall of 1862; that upon his removal to said county of Augusta the said Heirome L. Opie took with him most of said single bills, most of which remained unpaid at the time of his said death; that at the time of his said death, as your orator charges, the said single bills which fell due respectively on the first days of January, 1860, 1861, 1862, remained unpaid, as well as the interest which had accumulated thereon, and the two remaining single bills which had not yet, at the time of *his* death of said Heirmone L. Opie, fallen due were also, with all the
7 accumulated interest thereon, unpaid; how much more indebtedness remained unpaid at the time of the death aforesaid your orator is not informed and here calls upon said Henry W. Castleman, as well as said Nannie L. & Thomas Opie, to answer & say; that in November, 1862, said Nannie L. Opie and Thomas Opie took out letters of administra*tor* upon the estate of said Heirmone L. Opie in what was then known as the county court of said county of Augusta, in the State of Virginia; that said county of Augusta was then, during the late war between the States known as the war of the rebellion, in that part of the State of Virginia which dhered to the government at the city of Richmond and within the lines of the armies of Confederate States; a copy of the order of said county court granting said administra*tor as* herewith filed as part hereof, marked Complainant's Exhibit "C;" that from the time of the commencement of said war, in 1861, till its close, in 1865, the said county of Augusta was within the lines of the armies of the said Confederate States and under the control thereof, and the said Heirome L. Opie during his life from the commencement of said

war until his death resided in said county and lived and re-
8 mained all the while within said lines and so did said Nannie S. Opie and Thomas, and after the death of said Heirome the said Nannie S. and Thomas *contrived* to live and remain within said lines, residing in said county of Augusta aforesaid, until after said war ended; that soon after the war commenced the armies of the Government of the United States took and kept complete control and possession of said county of Jefferson except occasionally for a very short time, when the armies of the Confederate States would advance in open hostil-y and for a few days or weeks at a time have control (military) of said county; that said Henry W. Castleman during the whole of said time of the war resided and lived in the said county of Jefferson aforesaid; that some time during the fall of the year 1864 or early in the winter of 1865 or perhaps a — earlier than fall of 1864, when what was then and there known as Confederate money, which was notes or promise of Confederate States, as then known, to pay, was almost worthless now in said county of Augusta and totally so within the lines of the armies of the Government of the United States, the said Henry W. Castleman, having before that time heard of the death of said Heirome L. Opie and conceiving the idea of taking up his said bonds,
9 which were then in the hands of said Nannie S. Opie or said Thomas, but in said Nannie, as your orator charges, by paying them with worthless or next to worthless Confederate money and of practicing a great wrong and fraud not only upon said Nannie but upon all of said children of your orator's said father, including your orator, gathered together large amount- of said Confederate notes and went once or twice from his home, in the county of Jefferson, and from within the lines of the armies of the Government of the United States in the said county of Augusta and within the lines of the armies of said Confederate States, taking with him said Confederate money; that upon reaching said county of Augusta he, the said Castleman, proceeded to carry out his wrong so conceived by appealing to the fears of said Nannie S. Opie and Thomas, — by pursuasion and with the aid of one or more persons then employed by him to aid him in the accomplishment of his purpose he, the said Castleman, succeeded in gitting said Nannie S. and said Thomas to deliver up to him all of the said single bills and receive therefor nothing but said worthless Confederate money to a very large amount—that is, to an amount large enough to cover the said
10 total amount of said single bills (as aforesaid unpaid at the time of said Heriome's death), with the accrued interest thereon up to that time, and said Confederate money was thus passed with to said Nannie S. and Thomas at its nominal amount. Nothing was ever paid by said Castleman upon said indebtedness after the death of said Heirome, except in such worthless Confederate money; and the said Castleman succeeded also in getting this — att'y signed, a *proper* writing acknowledging the payment of said single bills and requesting a release of said deed of trust. At the time of said transaction the said John H. was a minor — infant under the age of twenty-one years. Your orator distinctly charges that

the said acts of said Henry Castleman *was* a direct fraud upon the rights of your orator and of the other said defendants to this bill and cannot be sustained or upheld. The said — was soon after the transaction aforesaid ended, and by reason of said transaction the said unpaid deferred payments became a total loss to the estate of said Heirome L. Opie, and nothing of them will ever be realized unless by the help of the court of justice. Robert Y. Conrad, who is now dead, *than* resided in the town of Manchester, Virginia, which is about ninety miles north of the place where said Opie resided in
11 Augusta county, and said Castleman'-home in Jefferson county was and is some thirty miles north of Manchester. In the month of September, 1865, soon after the close of said war, said Castleman procured from said trustee, Robert Y. Conrad, what purported to be a release of said deed of trust, and on the 10th of February, 1871, and not until then, he had it admit-ed to record in the county of Jefferson aforesaid. Your orator files herewith a certified copy of said purported release as part of the bill, marked Complainant's Exhibit D, and calls the attention of your honor to its language. Said Nannie S. Opie and Thomas Opie *has* never nor has either of them ever pretended to make any settlement of their accounts as personal representatives of the estate of said Heirome S. Opie, dec'd, nor have they by any such settlement or otherwise accounted in any way to your orator or to any of the distributees of said estate for any of said unpaid purchase*d*-money bonds or any part of them. The estate of said Heirome S. Opie, dec'd, was perfectly solvent and is not in any way indebted. Your orator many years ago removed to the State of Kentucky. He did not
12 know until recently of said purported release, nor could he even be said to have had constructive notice of it until said 10th of February, 1871; and being so far away in a distant State from said county of Augusta he did not know until recently the condition of said affairs there. He knows that even if he could do so it would be wrong to *i*dneaver to make the said Nannie S. and Thomas liable for said unpaid purchase*d* money under the circumstances of the case, for he feels perfectly satisfied that they were deceived and defrauded by said Castleman in the premises; but he does charge that they had no right to receive said Confederate money or to give up said purchase-money bonds as they did, and said Castleman had and has no right to have them or have them treated as paid. By means of the transaction aforesaid said Castleman has not only become possessed but been in the enjoyment of said valuable property, for which he has not honestly paid, and so much thereof as was not honestly paid for, dollar for dollar, by said Castleman has been *then for*, at any rate, a total loss to the heirs and distributees of the estate of said Heirome S. Opie aforesaid. Forasmuch, then, as your orator is so much injured and has not remedy save in
13 court of equity your orator prays that the said Henry W. Castleman, Nannie S. Opie, in her own right and as such administratrix; Thomas Opie, in his own righ- and as such administrator; John N. Opie, and Mary Meade may be made parties de-

is given them to file their answer-, which are accordingly now filed; and this cause, now coming on to be heard this 21st day of March, 1882, upon the bill and exhibits therewith filed, the answers of John N. Opie, Mrs. Mary Meade, and H. W. Castleman and Henry W. Castleman and general replication to the latter answer, & upon the deposition- of H. L. Opie, H. W. Castleman, James Sinclair, Wm. W. Smith, R. Hume Butcher, heretofore taken and filed in this cause, was argued by counsel; on consideration whereof, by consent of parties, by their counsel, given in open court, this
19 cause is submitted to the court for decision, with leave to counsel for both the complainants and defendant- to file either written or printed notes of argument, and with the further understanding and agreement, by like consent, that this cause is to be argued only before the judge of this court, at Parkersburg, in this district, on some day between the 1st and 10th of June next to be fixed by the judge, of which notice will be given to the counsel in the cause.

Endorsed as follows:
Order of March 21st, 1882. Copy.

20 And be it further remembered that upon another day, to wit, on the 21st day of March, 1882, Mrs. Mary Meade filed her separate answer; which answer is in the words and figures following, to wit:

Answer of Mrs. Mary Meade.

U. S. Dist. Court for West Va.

H. L. Opie
vs.
Henry W. Castleman, &c.

The seperate answer of Mary Meade, of Danville, Va., to a bill in chancery filed against her & others in the district court of the U. S. for the district of West Va., at Wheeling, by H. L. Opie.

This respondent, for answer to said bill or to as much thereof as she is advised is necessary for her to answer, says—

That it is true that her father, H. L. Opie, died near Staunton, Va., in June, 1862, and while the late civil war was being carried on, and that her said father died intestate, leaving his widow and children as named in said bill.

21 Respondent further says that when her father died she was nineteen years of age and her brother John 17 years of age. Respondent admits that her mother & brother Thomas qualified in Nov., 1862, as the personal representatives of the estate of her father and they have never accounted to her for any portion of said bonds received by them from said Castleman, which was worthless Confederate money and Va. bank notes, which were also worthless. Respondent knew that Henry W. Castleman was largely indebted to her father at the time of his death, and she says that she never consented

to that indebtedness being paid off either in Confederate money or Va. bank notes, and that she never enjoyed the proceeds of said indebtedness in any way. Respondent says that def't Castleman claims to have paid his indebtedness to her father's estate in Confederate money and Va. bank notes, and thereby he prospered whilst she and her codistributees suffered; has deemed it a matter of great injustice, which she asks the court to correct, & prays that the release named in the bill may be set aside; and, having answered, asks to be hence dismissed.

STATE OF VA., }
Danville. }

22 Mary Meade this day made oath before me that the statements contained in this answer are true.

Given under my hand this 19th day of May, 1885.

W. J. DANCE, JR., *N. P.*

Endorsed as follows:
Mary Meade's answer.

23 And be it further remembered that on the 1st day of September, 1885, the complainant filed his bill of complaint; which bill is in the words and figures following, to wit:

2nd Bill of Complaint.

In the District Court of the United States for the District of West Virginia.

H. L. OPIE }
vs.
H. W. CASTLEMAN; NANNIE S. OPIE & THOMAS OPIE, in Their Own Right and as Administratrix & Administrator of Hirome L. Opie; John N. Opie, & —— Meade & Mary Meade, His Wife. }

To the Honorable John J. Jackson, judge of the district court of the United States for the district of West Virginia:

Humbly complaining, showeth unto your honor your orator, H. L. Opie, that your orator is a non-resident of the State & district of West Virginia and is a citizen of the State of Kentucky.

24 That the said defendant H. W. Castleman is a resident and citizen of Jefferson county, in the said district and State of West Virginia.

That the defendant- Nannie S. Opie and John N. Opie are citizens of Augusta county, in the State of Virginia.

That the defendants Mary Meade & her husband, —— Meade, are residents of Danville, in the State of Virginia.

That Hirome L. Opie, the father of your orator, died in the fall of the year 1862, in the county of Augusta, in the State of Virginia, leaving his widow, the said Nannie S. Opie, & his four children, Thomas Opie, John N. Opie, Mary, now the wife of said —— Meade, & your orator.

That said Thomas Opie resides in the city of Baltimore, in the State of Maryland.

That the said Hirome L. Opie, the father of your orator, by deed of Jan'y 1st, 1856, resided in Jefferson county, in this State, conveyed to said H. W. Castleman two several tracts of land lying in the county of Jefferson aforesaid, one tract containing 596 acres & the other 419 acres, for the consideration named of $41,733.66½, of which there was paid at the time of the purchase $10,000.00 in cash, and for the residue of said purchase-money he, said Castleman, executed his several single bills, payable to said Hirome L. Opie—

25 The 1st payable Jan'y 1st, 1857, for $5,000.00;
The 2nd payable Jan'y 1st, 1858, for $5,000.00;
The 3rd payable Jan'y 1st, 1859, for $3,622.27¾;
The 4th payable Jan'y 1st, 1860, for $3,622.27¾;
The 5th payable Jan'y 1st, 1861, for $3,622.27¾;
The 6th payable Jan'y 1st, 1862, for $3,622.27¾;
The 7th payable Jan'y 1st, 1863, for $3,622.27¾;
The 8th payable Jan'y 1st, 1864, for $3,622.27¾,

each dated Jan'y 1st, 1856, & bearing interest from date, payable annually, and secured said single bills by a deed of trust upon said real estate to Robert Y. Conrad as trustee, which deed of trust was duly recorded in the county court of said county of Jefferson.

That soon after said deed and deed of trust were executed the said Hirome L. Opie removed to the said county of Augusta, in the State of Virginia, where he resided until the time of his death, in the fall of 1862.

That upon his removal to the county of Augusta said Hirome L. Opie took with him the said single bills, most of which remained unpaid at the time of his death.

That at the time of the death of said Hirome L. Opie the said single bills which fell due on Jan'y 1st, 1860, 1861, & 1862 & '63, as your orator charges, remained unpaid, as well the interest on them, and all of the single bills which had not become due at the

26 time of the death of said Hirome L. Opie, together with the interest thereon, was unpaid also; but your orator is not now correctly informed how much of said indebtedness exactly remained unpaid at the time of the death aforesaid, but calls upon said H. W. Castleman, as well as said Nannie S. & Thomas Opie, to answer & say.

That in November, 1862, the said Nannie S. Opie and Thomas Opie took out letters of administration upon the estate of said Hirome L. Opie in the county court of said county of Augusta, in the State of Virginia. A copy of the order of the said county court granting such administration is herewith filed as Plaintiff's Exhibit "C."

That the said county of Augusta was, during *during* the late civil war, known as the war of the "rebellion," in that part of the State of Virginia which adhered to the government at the city of Richmond, in said State, & to the government of the Confederate States of America; that from the time of the commencement of said war, in 1861, until its close, in 1865, the said county of Augusta was within

the lines of the armies of the said Confederate States & under the control thereof.

That the said Hirome L. Opie, during his life, from the time of the commencement of said war until the time of his death, resided in said county of Augusta & lived & remained within said
27 lines all the while, & so did said Nannie S. & Thomas Opie.

That after the death of said Hirome L. Opie the said Nannie S. & Thomas Opie continued to live and remain within said lines in said county of Augusta until after said war ended.

That soon after said war commenced the armies of the Government of the United States took & kept complete control & military possession of said county of Jefferson except occasionally, for a very short while at a time, when the armies of the Confederate States would advance in open hostility & for a few days or weeks at a time would have temporary military control of said county.

That the said H. W. Castleman during the whole time of the said war resided and lived in the said county of Jefferson.

That some time during the fall of 1864 or early in the winter of 1865, or perhaps a little earlier than the fall of 1864, when what was then & there known as Confederate money, which was notes or promises of the Confederate States to pay money, was almost worthless in said county of Augusta & totally so within the lines of the armies of the Government of the United States, the said H. W. Castleman, having before that time heard of the death of said Hirome L. Opie & conceiving the idea of taking up his said
28 bonds, which were then in the hands of said Nannie S. & Thomas Opie or said Thomas, but in the hands of said Nannie S., or, your orator charges, by paying them with said worthless or next to worthless Confederate money & of practicing a great wrong and fraud, not only upon said Nannie S., but upon all of said children of your orator's said father, including your orator, gathered together a large amount of such "Confederate notes," and went from his said house, in said county of Jefferson, & from within the lines of the armies of the Government of the United States to said county of Augusta & to within the lines of the armies of the Confederate States, taking with — such "Confederate money" to a large amount.

That on reaching said county of Augusta the said Castleman proceeded to carry out his wrong so conceived as aforesaid, &, by appealing to the fears of said Nannie S. & Thomas, by persuasion, & with the assistance of one or more persons then employed to aid him in executing his purposes aforesaid, he, the said Castleman, succeeded in getting the said Nannie S. & Thomas to deliver up to him all of the said single bills & to receive therefor nothing but said worthless Confederate money to a very large amount—that is, to an amount large enough to cover the total amount of said single
29 bills & interest then unpaid — & passed to said Nannie S. & Thomas such "Confederate money" at the nominal amount appearing upon the face of the notes.

Nothing was paid by said Castleman upon said indebtedness after the death of said Hirome L. Opie except such worthless Confederate money. Said Castleman also succeeded by the means so used

as aforesaid fraudulently in getting said Nannie & Thomas to sign a paper-writing acknowledging the payment of all of said single bills & requesting the said trustee to release the said deed of trust; that at the time of the said transaction the said John N. Opie was an infant. Your orator distinctly charges that the said act of said Castleman was a direct fraud upon the rights of your orator & the other defendants to this suit.

That after said transactions said war ended, in the spring of 1865, & by reason of the acts aforesaid of said Castleman the said unpaid deferred payments became a total loss to the estate of said Hirome L. Opie, & nothing will ever be realized from them unless by the help of a court of justice. Robert Y. Conrad, the said trustee in said deed of trust named, resided during said war & after the close until the time of his death, which took place some four or five
30 years since, in the town of Winchester, in the county of Frederick, in Virginia, about ninety miles north of said Opie's home, in the county of Augusta, the said Castleman's home being all the while, as aforesaid, in said county of Jefferson, about thirty miles north of the said town of Winchester.

That in September, 1865, soon after the close of said war, the said Castleman procured from said Robert Y. Conrad, the trustee aforesaid, a paper-writing purporting to be a release of the said deed of trust, and on the 10th day of February, 1871, had it admitted to record in said county of Jefferson.

The said Nannie S. & Thomas never have nor has either of them pretended to make a settlement of their accounts as the personal representatives of said Thomas L. Opie, deceased, nor have they or either of them, by such settlement or otherwise, accounted in any way to your orator or to any of the distributees of the estate of said Hirome L. Opie for any *on* said unpaid purchase-money, bonds, or any part thereof.

Your orator further charges that the estate of his said father was perfectly solvent & in nowise involved with debt.

Your orator many years ago removed to the State of Kentucky and did not know until recently of said purported release of said deed of trust, nor could he be said to have had constructive
31 notice of it until said 10th day of February, 1871, & in fact he did not know until recently of it or of the true condition of affairs connected with the aforesaid unpaid purchase-money bonds.

Your orator knows that even if he could do so it would be wrong for him to make said Nannie S. & Thomas Opie responsible for said unpaid purchase-money bonds under the circumstances of the case, for he feels perfectly satisfied that they were deceived and defrauded by said Castleman in the premises. But he does charge that they had no right to receive said Confederate money in payment of said bonds or otherwise for them or to give up said bonds to said Castleman, & said Castleman has no right to have them or treat them as paid.

Said Castleman has since his said purchase all the while been possessed of & enjoyed the said valuable property for which he has

not honestly paid, & so much of said purchase-money as was not paid "dollar for dollar" by said Castleman has been thus far a total loss to the estate of said Hirome L. Opie & his heirs-at-law.

Forasmuch, then, as your orator is much injured in the premises and has no remedy save in a court of equity, he prays that said H. W. Castleman, Nannie S. Opie, & Thomas Opie, in their own rights and as administratrix & administrator
32 of said Hirome L. Opie, deceased, & said John N. Opie & —— Meade & Mary, his wife, may be made parties defendants to this bill and required to answer the same; that the said Castleman & Nannie S. & Thomas Opie may be required to state which & how many of said single bills remained unpaid at the time of the death of said Hirome L. Opie & which of them were delivered to said Castleman after the death of said Hirome L. & how much of them or either of them was ever paid by said Castleman to said Nannie S. & Thomas or either of them in good current money of the United States & how much in "Confederate money" was passed by said Castleman to said Nannie & Thomas or either of them for said unpaid single bills; that said deed of release made by said Conrad, trustee, may by the court be set aside & declared null; that said Castleman may be required to pay in good lawful money so much of said purchase-money, single bills, & interest thereon as has not been paid in good lawful money, & that in default thereof a trustee may be appointed by the court in the room of said Conrad, who is dead, charged with the duty of making sale of said real estate or so much thereof as may be necessary to pay off said purchase-money in good & lawful money to the legal representatives
33 or distributees of the estate of said Hirome L. Opie, dec'd, according to their respective rights, including said widow, Nannie S., & for such other & further relief, general or special, as the nature of the case requires, the rules of equity admit, or your honor may deem meet & proper; & your orator will ever pray, &c.

H. L. OPIE,
By ROBERT WHITE,
His Attorney.

STATE OF KENTUCKY, } *ss:*
Kenton County, }

H. L. Opie, having been duly sworn, says that the original papers in this case have been lost or mislaid, and that the foregoing is a substantial copy of the original on every material fact.

H. L. OPIE.

Subscribed and sworn to before me by H. L. Opie this May 15th, 1885.

JOS. C. FUNNELL,
U. S. Com'r.

Endorsed as follows:
34 U. S. court. Ch'y bill. Opie — Castleman, &c. Filed in open court by leave of the court Sept. 1st, 1885. Test: Jasper Y. Moore, clerk.

Nannie S. & Thos. Opie, but the children of said intestate,
40 gathered together a large amount of said Confederate notes,
& went once or twice from his home, in said county of Jefferson, within the lines of the armies of the United States, to said county of Augusta, within the lines of the Confederate States, taking with him such Confederate money; that upon reaching the county of Augusta he, the said Castleman (the respondent), proceeded to carry out his wrong so conceived, — by appealing to the fears of the said Nannie S. & Thos. Opie, by persuasion, & with the aid of one or more persons then employed by him to aid him in the accomplishmentof his said purpose he, the said Castleman (this respondent), succeeded in getting the said Nannie S. & said Thos. Opie to deliver up all of said single bills & receive therefor nothing but said worthless Confederate money to a large amount—that is, to an amount large enough to cover the said total amount of said single bill-," &c., &c.

Respondent is not content to make a general denial of this statement, & in order that he might reply thereto in detail he has quoted at length from said bill & that he might at the same time show to the court how, in utter disregard of the truth, presumably to lay the foundation whereon to construct & make a claim against him that has no foundation in truth & in fact, reckless the complainant has been in the manufacture of his facts & how unwarranta-
41 ble he has been in his offensive & invidious assault upon the conduct of the respondent, & he cannot forbear to say that he believes that the complainant has wantonly perverted the truth and suppressed facts in his knowledge, compelled thereto, it may be, by the necessity of the case, in order to give color to his false claim that it may fall to the ground. Respondent, now proceeding to answer the said allegation, says that in the fall of 1862, and not in 1864 or early in 1865, as charged in the bill, in company with complainant he went from his home, in Jefferson county, Virginia, to Staunton, in Augusta county, said State of Virginia, for the purpose of paying off two of his said single bills which were then due & unpaid, & with the knowledge, consent, and full approval of complainant he paid the same off & took up & cancelled two of said bonds, using for such payment what was herein known as Confederate treasury notes, which then constituted the only circulating medium in said county of Augusta and which passed current in the county of Jefferson, where respondent resided, one being able readily to use it either as a purchasing medium or in the payment of debts either to individuals or banks. There was no objection to it or hesitancy about it upon the part of said personal representatives or either of them in receiving payment upon said bonds in such currency; indeed, respondent did not then &
42 does not now see how they could hesitate, since it was the only currency in circulation in the section and had a purchasing capacity almost, if not quite, equal to gold; & so it is that respondent denies that he "conceived" the idea of practicing any wrong or did practice any wrong, or that he persuaded or intimidated or by any other means, either personal or through the aid of others, induced the

said personal representatives or either of them to receive payment of said bonds in Confederate money; on the contrary, this respondent acted in the most perfect good faith, and he indignantly denies that he acted either wrongfully or fraudulently; if any wrong was done or fraud perpetrated he denies that it was done by him or that he had even the slightest knowledge or suspicion of it.

After the payment of the two single bills, which were those that had matured on the 1st January, 1861 & 1862, there still remained two others of said single bills, maturing respectively on 1st Jan'y, 1863 & 1864, which said last bonds the said Nannie S. & Thos. Opie offered to receive *to receive* in payment the same character of currency, on the faith of which this respondent sold his crop of wheat for Confederate currency; but after he made the sale & before he sent the proceeds he was notified by the said personal representatives that they would decline to receive Confederate money
43 in payment of the said single bills & would only receive notes of banks incorporated by the State of Virginia in payment thereof, & accordingly respondent, having failed with the means of paying said bond to mature 1st Jan'y, 1863, with his wheat crop, was forced to borrow the kind of money in which he was notified he could pay his bond, and in February, 1863, with notes of the character demanded, through the hands of Charles H. Lewis, he paid off his said bond and all interest thereon, then leaving unpaid but one of said single bills, which on 4th of Jan'y, 1864, just four days after maturity, this respondent, through Mr. James Sinclair, paid off in full, with all interest due thereon, using in said payment notes issued prior to the late civil war by banks incorporated by the State of Virginia prior to the late civil war, being lawful money of the United States, and thereupon the said bond, together with a written order to the Hon. R. Y. Conrad, trustee in the deed of trust given to secure said bond, to release the lien of said trust deed, *now* sent to respondent by said personal representatives, and so this respondent says that it is not true that the only payment made by him after the death of said H. L. Opie upon said indebtedness was in worthless Confederate money, but, on the contrary, but two of said bonds were paid in Confederate money, & that,
44 too, at the time when such currency was very little, if any, depreciated in value & had a purchasing and paying value nearly if not quite equal to gold, & the other two of said bonds were paid in Virginia money issued prior to the war; nor is it true this respondent by any illegal or deceptive means obtained from said representatives said praper-writing directing said trustees to release said deed of trust, but in the absence of respondent & without solicitation personally or persuasion upon his part said paper was sent to him.

It is not true that soon after said transaction the war ended, but on the contrary a considerable time elapsed between such payment & the termination of the war; exactly how much will appear from the foregoing statement of the times at which said several payments were made.

Respondent admits that the late Hon. R. Y. Conrad during life

resided in Winchester, Frederick county, Virginia, about 70 miles distant from Staunton, but only 17 & not 30 miles from the place of residence of respondent. Respondent admits that said trustee, on presentation of said bonds & of an order drawn by said personal representatives, did execute to him a deed releasing said lien of said deed of trust & delivered it to respondent, & by him it was caused to be recorded, the exact date of which he does not recollect.

45 Respondent does not know whether the payments made by him to said present representatives was utilized by them for the benefit of their intestate's estate or not, either in payment of debts or in distribution among his distributees; but if the averment is true that they were lost to the estate it was no act or fault of respondent & without his aid or knowledge, but he calls for strict proof thereof. Whether or not the said personal representatives have made any settlement of their accounts or in any way have accounted for the estate that passed into their hands or under their control he does not know, &, so far as it is sought to effect him by such omission, he calls for strict proof.

Respondent denies that the complainant only recently heard of said deed of release executed to him as aforesaid by the said R. Y. Conrad, & submits that such cannot be true, because he says that the complainant knew that he paid off his purchase-money bonds, & was therefore entitled to such release; besides which the complainant was a resident of said county of Augusta, in said State of Virginia, for many years after the close of the war—certainly till 1873—& it is scarcely credible that he should not have heard of the fact that he had a deed releasing said lien.

Respondent again, in answer to said bill, denies that he practiced any fraud or deception upon said personal representa-
46 tives or either of them, & submits to the court the question of where the liability, if any, under the circumstances, should rest. Respondent reserves the right to produce & file at the hearing of the cause all single bills executed by him to H. L. Opie, together with the deed of release from R. Y. Conrad, trustee.

This defendant, answering, says that he has made a full, complete, & final settlement of his indebtedness to H. L. Opie with his personal representatives, & now, after the lapse of so many years & the long and continued silence & acquiescence of complainant in said settlement, it would be, as he submits, grossly inequitable & unjust to reopen said settlement & a flagrant wrong upon the rights of this defendant; and now, having answered, and denying all fraud & unlawful combination, & denying each & every allegation in said bill contained not herein expressly admitted, he prays to be hence dismissed with his most reasonable costs & charges.

H. W. CASTLEMAN.

MARSHAL McCORMICK, *Counsel, &c.*

STATE OF KENTUCKY, *Kenton County.*

H. L. OPIE *vs.* H. W. CASTLEMAN.

47 H. L. Opie says that the foregoing is a correct and substantial copy of the original answer filed by said Castleman in the above-entitled cause. Affiant further says that the original papers, including this answer, were lost or mislaid after the cause had fully matured for hearing.

H. L. OPIE.

Subscribed and sworn to before me by H. L. Opie this 20th day of May, 1885.

[SEAL.] JOS. C. FINNELL, *U. S. Com'r.*

Endorsed as follows:
U. S. court. Opie *vs.* Castleman. Copy of Castleman'- answer. Filed in open court by the leave of the court Sept. 1st, 1885. Test: Jasper Y. Moore, clerk.

48 HENRY W. CASTLEMAN'S EXECUTOR *ads.* H. L. OPIE. } Ans. of Castleman's Executor.

The answer of S. W. Washington, administrator of Henry W. Castleman, dec'd, to a *scire facias* sued out by H. L. Opie from the clerk's office of the district court of the United States for the district of West Virginia.

This respondent has no personal knowledge of the matters in controversy, but from information derived from others he is pursuaded and believes that the answer of his intestate gives the true and correct version of the whole matter in litigation.

He relies for defence to this proceeding, moreover, not only upon the laches and neglect of complainant in not originally asserting his supposed claim, but also especially upon his continued neglect and delay in the prosecution of this suit since it was instituted, and he invokes the application by this court to this case of all those salutary principles of courts of equity which forbid them to aid or countenance stale claims, where, as in this case, the complainant has for so many years slept upon his supposed rights.

And now, having fully answered and disclaiming, &c., &c., he prays that he may be hence dismissed with his proper costs.

S. W. WASHINGTON,
Adm'r of H. W. Castleman, Dec.

Endorsed as follows:
Answer of S. W. Washington, adm'r of Henry W. Castleman, dec.

49 H. L. OPIE *vs.* H. W. CASTLEMAN. } Order and Decree Entered September 7th, 1886.

S. W. Washington, the administrator of Henry W. Castleman, deceased, this day moved the court to dismiss this suit for want of prosecution, which motion the court takes under advisement; and the plaintiff suggested the death of the said Henry W. Castleman and filed his bill of revivor asking that this cause be revived and ordered to proceed against the said S. W. Washington, administrator of Henry W. Castleman and —— Castleman, the widow of the said Henry W. Castleman, and H. D. Littlepage and Emily C., his wife, formerly Emily C. Castleman; Logan Osborne and Mary, his wife, formerly Mary Castleman; J. S. Powers and Estelle, his wife, formerly Estelle Castleman; John S. Castleman, and Henry W. Castleman, Jr., the said Emily C., Mary, Estelle, John S., & Henry W., Jr., being the children and heirs-at-law of the said Henry W. Castleman, deceased, and thereupon it is ordered that process do issue against the said parties named to answer the said bill and to shew cause, if any they can, why the said suit shall not be revived as prayed for, which process shall be made returnable to the November rules, 1886, of this court. On motion of the plaintiff, leave is given to take or retake any depositions he may desire, which depositions shall be subject to any proper exceptions, and like leave is given the defendants.

Endorsed as follows:
This decree may be entered. Rob't White, att'y for pl'f. R. T. Barton & Marshall McCormick, for def't.

50 And upon another day, to wit, on the 16th day of May, 1887, the defendant, Henry W. Castleman, filed his demurrer, plea, and answer, which is in the words and figures following, to wit:

Demurrer, Plea, and Answer of Henry W. Castleman.

In the District Court of the United States for the District of West Virginia.

H. L. OPIE *vs.* H. W. CASTLEMAN. }

The demurrer, plea, and answer of Henry W. Castleman to a bill in equity exhibited against him and others in the said district court of the United States for the district of West Virginia by H. L. Opie.

This defendant doth demur to the said bill of complaint for that the same is not sufficient in law; and for plea in this behalf says that the complainant ought not to maintain his said action and he ought not to be required to answer further, because he says that

the said district court of the United States for the district of
51 West Virginia hath not the jurisdiction to hear and determine the matters and things alleged in said bill nor the jurisdiction to grant the relief therein sought for, and this he is ready to verify; wherefore he prays judgment of this honorable court whether he ought to be required to make any further answer to said bill; and now, not waiving said demurrer and plea *in* either of them, but wholly relying and insisting thereon, this defendant for answer to said bill or unto such parts thereof as he is advised it is material for him to answer unto, answering, he says that he admits that he is a resident of the county of Jefferson, in said State of West Virginia; but as to the residence of the complainant and this respondent's codefendant- he does not know of his own knowledge, though he has no reason to doubt the correctness of the statement of the bill in respect thereof.

He further admits that by deed dated January 1st, 1856, in pursuance of a contract previously made and entered into, Hirome L. Opie, the father of the complainant, conveyed to the respondent two several tracts of land in Jefferson county, Virginia, now West Virginia, for a monied consideration of forty-one thousand seven hundred and thirty-three 66½ dollars, which was paid and se-
52 cured to be paid as follows: Ten thousand dollars in cash and the residue was covered by the eight bonds of this respondent, two of which were for five thousand dollars, each due respectively on the first days of January, 1857 and 1858, and the remaining six were each for the sum of three thousand six hundred and twenty-two 27¾ dollars, due respectively on the 1st days of January, 1859, 1860, 1861, 1862, 1863, and 1864, with interest from January 1st, 1856, payable annually, all of which said bonds or single bills were secured by deed of trust on said land, in which the late R. Y. Conrad was trustee. Respondent also admits that soon after his said purchase of the *of the* said H. L. Opie the latter removed his said residence from the county of Jefferson, in said State of Virginia, to the county of Augusta, also in said State of Virginia, and continued to reside in said latter county until the time of his death, which, respondent believes, occurred in the year 1862; whether spring or fall of that year he does not know. For further answer to said bill this defendant denies that at the time of the death of said Hirome L. Opie there were due and unpaid three of said single bills, which matured on the 1st days of January, 1860, 1861, and 1862, as well as the interest which had accrued thereon, and that *that* the accrued inter-
53 est upon the remaining two of said single bills that had not matured was also due and unpaid, but, on the contrary, he says that at the time of the death of said H. L. Opie there remained unpaid but four of the said single bills, two of which had matured on the 1st days of January, 1861 and 1862, & the remaining two were not payable until Jan. 1st, 1863 & 1864, respectively, upon all of which the interest had been paid up to January 1st, 1861, such payment having been made to the said H. L. Opie in his lifetime. It is also true that in the county court of Augusta, in said State of

Virginia, the wife of said decedent, Mrs. Nannie S. Opie, and his son, Dr. Thomas Opie, applied for and obtained letters of administration upon his estate, and respondent believes that both of them acted as such jointly and severally. It is also true that the State of Virginia, — which the counties of Jefferson & Augusta formed a part, at or about the time of the commencement of the late unfortunate civil war between the States, united with and became a part of the government known as the Confederate States government, whose capital was at the city of Richmond, in the State of Virginia; but it is not true that during the whole period of the war said county of Augusta was within the lines of the army of said Confederate States,
54 but during a portion of said period the said county was within the military lines of the armies of the United States. Respondent believes it to be also true that both of the personal representatives of said Hirome L. Opie, deceased, resided within said county of Augusta, at the place of residence of their intestate, and remained there during the whole period of the war. The county of Jefferson, in said State of Virginia, might properly be regarded during the greater part of the war as neutral ground, neither army occupying or having control of it for any length of time during that period, so that he denies that during the whole or the greater part of said period it was within the lines of the armies of the *armies of the* United States; it was occupied or, rather, parts of it were (occupied) alternately and at irregular periods by both armies, but there was little time during the war when there was not easy communication from said county of Jefferson with said county of Augusta and other counties in said State of Virginia.

Respondent denies as a whole and each and every part of the allegation that during the fall of 1864 or early in 1865, perhaps in but not earlier than the fall of 1864, when what was known as Confederate money was almost worthless in said county of Jefferson, the said Henry W. Castleman (this respondent), having before
55 heard of the death of the said H. L. Opie conceiving the idea of taking up his said bonds, then in the hands of said Nannie S. Opie or said Thomas Opie, by paying them with said worthless or next to worthless Confederate money and of practicing a great wrong and fraud not only upon said Nannie S. & Thomas Opie, but the children of said intestate, gathered together a large amount of such Confederate notes and went once or twice from his home, in said county of Jefferson, within the lines of the armies of the United States, to said county of Augusta, within the lines of the armies of the confederate States, taking with him such Confederate money; that upon reaching said county of Augusta he, the said Castleman (this respondent), proceeded to carry out his wrong so conceived, — by appealing to the fears of the said Nannie S. and Thomas Opie, by persuasion, and with the aid of one or more persons there employed by him to aid him in the accomplishment of said purpose, he, the said Castleman (this respondent), succeeded in getting the said Nannie S. and said Thomas Opie to deliver up all of said single bills and received therefor nothing but said worthless Confederate money to a very large amount—that

is, to an amount large enough to cover the said total
56 amount of said single bills, &c., &c. Respondent is not content to make a general denial of this statement, and in order that he might reply thereto in detail he has quoted this at length from said bill, and at the same time that he might show in the court how, in utter disregard of the truth, presumably to lay the foundation whereon to construct and make a claim against him that has no foundation in truth and in fact, reckless the complainant has been in the manufacture of his facts, and how unwarrantable he has been in his offensive and invidious assault upon the conduct of this respondent, and he cannot forbear to say that he believes that the complainant has wantonly perverted the truth and suppressed facts in his knowledge, compelled thereto, it may be, by the necessity of the case, in order to give color to this false claim, without which he must have known that it must fall to the ground. Respondent, now proceeding to answer the said allegations, says that in the fall of 1862, and not in 1864 or early in 1865 as charged in said bill, in company with the complainant, he went from his home, in Jefferson county, Virginia, to Staunton, in the county of Augusta and said State of Virginia, for the purpose of paying off two of his said single bills, which were then due and unpaid, and with
57 the knowledge, consent, and full approval of the complainant he paid the same off and took up and cancelled the said bonds, using for such payment what were known as Confederate treasury notes, which then constituted the only circulating medium in said county of Augusta and which passed current in the county of Jefferson, where respondent resided and being able to readily use it as a purchasing medium or in the payment of debts either to individuals or banks. There was no objection to or even hesitancy about upon the part of said personal representatives or either of them receiving payment of said bonds in such currency. Indeed, respondent did not then and does not now see how they could hesitate, since it was the only currency in circulation in that section, and had a purchasing capacity almost, if not quite, equal to gold; and so it is that respondent denies that he conceived the idea of practicing any wrong or did practice any wrong, or that he persuaded or intimidated or by any other measure, either personal or through the aid of others, induced the said personal representatives or either of them to receive payment of said bonds in Confederate money. On the contrary, this respondent acted in the most perfect good faith, and he indignantly denies that he acted either wrongfully or fraudu-
58 lently. If any wrong was done or fraud practiced he denies that it was done by him or that he ever had the slightest knowledge of suspicion of it. After the payment of the two said single bills, which were those that had matured on the 1st days of January, 1861 and 1862, there still remained two other of the said single bills, maturing respectively on the 1st days of January, 1863 and 1864, which said last-named bonds the said Nannie S. and Thomas Opie offered to receive in the same character of currency, on the faith of which this respondent sold his crops of wheat for Confederate currency, but after he had made the sale and before he sent the pro-

ceeds he was notified by the said personal representatives that they would decline to receive Confederate money in payment of the said single bill and would only receive Virginia money in payment thereof, and accordingly respondent, having parted with the means of paying said bond to mature Jan. 1st, 1863, viz., his wheat crop, was forced to borrow the kind of money in which he was notified he could alone pay his bond, and in February 1st, 1863, with Virginia money, through the hands of Charles H. Lewis, he paid off his said bond and all interest thereon, thus leaving unpaid but one of said single bills, which, on the 4th day of January, 1864,
59 just four days after its maturity, this respondent, through Mr. James Sinclair, paid off in full, with all interest due thereon, using in said payment Virginia money issued prior to the late civil war, the same being lawful money of the U. S., and thereupon said bond, together with a written order — the Hon. R. Y. Conrad, trustee in the deed of trust given to secure bond, to release the lien of said trust deed, were sent to respondent by said personal representatives, and so this respondent says that it is not true that the only payment made by him after the death of said H. L. Opie upon his said indebtedness were in worthless Confederate money, but, on the contrary, but two of said bonds were paid in Confederate money, and that, *two*, at a time when such currency was very little, if any, depreciated in value, and had a purchasing and paying value nearly, if not quite, equal to gold, and the other two of said bonds were paid in Virginia money issued prior to the war, nor is it true that this respondent, by any illegal or deceptive means, obtained from said personal representatives said paper-writings directing said trustee to release said deed of trust, but in the absence of respondent and without any solicitation personally or persuasive upon his part said paper was sent to him. It is not true that soon after said transaction the war ended, but, on the
60 contrary, a considerable time elapsed between such payment and the termination of the war; exactly how much will appear from the foregoing statement of the times at which said several payments were made. Respondent admits that the late Hon. Robert Y. Conrad during his lifetime resided in Winchester, Frederick county, Virginia, which is about ninety miles distant from Staunton, but only seventeen and not thirty miles from the place of residence of this respondent. Respondent admits that the said trustee, on the presentation of the said bond and of an order drawn by said personal representatives, did execute to him a deed releasing said land of the lien of said trust deed which was delivered to this respondent and by him caused to be recorded, the exact date of which, however, he does not recollect. Respondent does not know whether the payment made by him to the said personal representatives were by them used for the benefit of their intestate's estate or not, either in the payment of debt or in distribution amongst his distributees; but if the averment is true that they were lost to the estate it was by no act or fault of respondent and without his aid or knowledge, but he calls for strict proof thereof. Whether or not the said personal repre-

sentatives have ever made any settlement of their accounts
61 or in any way have accounted for the estate that passed into their hands or under their control he does not know, and so far as it is sought to affect him by such omission he calls for strict proof. Respondent denies that the complainant only recently heard of said deed of release executed to him as aforesaid by the said R. Y. Conrad, and submits that such cannot be true, because he says that the complainant knew that he has paid off his purchase-money bond and was therefore entitled to such release, besides which the complainant was a resident of the county of Augusta, in said State of Virginia, for many years after the close of the war, certainly until the year 1873, and it is scarcely credible that he should not have heard of the fact that he had a deed releasing said land. Respondent again, in answer to said bill, denies that he practiced any fraud or deception upon said personal representatives or either of them, and submits to the court the question of where the liability, if any, under the circumstances of this case, should rest. Respondent reserves the right to produce and file at the hearing of the cause all the single bills executed by him to H. L. Opie, together with the deed of release from R. Y. Conrad, trustee. This defendant, answering further, says that he has made a full, complete, and
62 final settlement of this indebtedness to Hierome L. Opie, with his personal representatives, and now, after the lapse of so many years and the long and continual silence and acquiescence of the complainant in said statement, it would be, as he submits, grossly inequitable and unjust to reopen said statement and a flagrant wrong upon the right of this defendant; and now, having fully answered and denying all fraud and unlawful combination and denying each and every allegation in said bill contained not herein expressly admitted, he prays to be hence dismissed with his most reasonable costs and charges.

(Signed) H. W. CASTLEMAN.

MARSHALL McCORMICK,
Counsel for Respondent.

STATE OF VIRGINIA, }
County of Clarke, } *sct:*

H. W. Castleman this day appeared before me, in said county, and made oath that the facts stated in the foregoing answer are true to the best of his knowledge and belief.

Given under my hand this 12th day of January, 1881.

(Signed) W. TAYLOR MILTON,
Notary Public.

63 Endorsed as follows:

H. L. Opie *vs.* Henry W. Castleman *et al.* Answer, &c. Copy. Filed May 16th, 1887. Test: Jasper Y. Moore, clerk D. C. U. S., D. W. Va.

64 *Plaintiff's Depositions. Filed May 16th*, 1887.

A copy of the depositions of H. L. Opie, taken at his office, in Covington, Ky., *in* August 17, 1881.

Henry W. Castleman, by Marshall McCormick, his councel, excepts to the taking of this deposition because no commission has issued from the dist. court of the U. S. at Wheeling or from its clerk authorizing the notary to take the same.

1st. By att'y for plaintiff. Please state your name, age, place of residence, and whither or not you are acquainted with the parties to this action; also state who are plaintiffs and defendants, with the place of residence of each.

Ans. Name, H. L. Opie; residence, Covington, Kentucky. I am acquainted with all parties to this action. I am the plaintiff, and Henry W. Castleman, N. S. Opie, Dr. Thos. Opie, Mary Meade, and Jno. N. Opie are defendants. Castleman lives in Jefferson county, West Virginia; N. S. Opie and Dr. Thos. Opie live in Bal-
65 timore; Mary Meade lives in Danville, Va., and John N. Opie lives near Staunton, Va. Henry W. Castleman has resided in Jefferson Co., W. Va., since 1856; Dr. Thos. Opie has resided in Baltimore, Md., since 1866, and N. S. Opie has resided in Baltimore for the last ten years; Mary Mead has resided in Danville, Virginia, ever since the war—the termination of the war; Jno. N. Opie has resided near Staunton, Virginia, since 1856; my father'- name was Heirom L. Opie, who died near Staunton, Virginia, in June, 1862, leaving no will. My mother, N. S. Opie, is about 61 years of age; my brother Dr. Thos. Opie was born in February, 1840; my sister, Mrs. Mary Mead, was born in 1842; my brother Jno. N. Opie was born March 14, 1837; my mother's brothers and sisters all lived in Staunton, Va., in 1861, '2, '3, & 4; my father died near Staunton, Virginia, in 1862, where he then resided.

2nd by same. State, if you know, which of the armies, the Federal or Confederate, had possession of Jefferson county, W. Va., from 1861 to 1864, inclusive. State all you know on the subject and the *some* of you- knowledge.

Ans. My impression is that in 1861 Jefferson Co. was held alternately by Federals and Confederates; in the latter part of 1862,
66 and September of that year the Federals held possession of said Jefferson Co., W. Va. After the battle of Antietam the Confederates left the counties of Jefferson and Berkeley and moved toward Culpeper, a portion of the army falling back through Page valley and another portion by way of Leesburg to said Culpeper county, thereby leaving the counties of Jefferson and Berkeley in possession of the Federals, who occupied and held said counties until after the battle of Chancellorsville, in May, 1863. In 1864 the county of Jefferson, to the best of my knowledge, was in possession of the Federals, but was occupied first by one side and then by the other. The county of Augusta was during nearly all this time held by Confederates. I remember that on September, 1862, I was

at Harper's Ferry as an enlisted soldier in the Staunton artillery of the Confederate army. I was with the army when it fell back up the valley after the battle of Antietam, in September, 1862. I do not remember being home until January, 1863. I may have been, but I do not remember it. I was at home at intervals during that time. I cannot give the dates when I was at home, as it has been so long ago.

67 3 by same. State whether or not in 1861 or '2 you went from Jefferson to Staunton, in Augusta county, Va.; if so, state who, if any one, accompanied you.

Ans. I remember going a portion of the way with Henry W. Castleman. I left him, to the best of my recol-ection, at Middletown, where a portion of our army was encamped, but I have no recol-ection of ever accompa*n*ing Mr. Castleman the entire distance from Jefferson Co. to Staunton.

4 Ques. by same. State, if you know, whether or not Henry W. Castleman was indebted to your father in any sum at the time of your father's death. If so, please state it—what sums or amounts, for what, and if same has been paid. If so, by whom, how, and when.

Ans. Yes, sir; he was indebted to him in four (4) land bonds, given by said Castleman for the purchase-money for a farm in said county of Jefferson, aggregating nearly $15,000. Two of said bonds of said Castleman w*a*re paid to my mother, the widow of my father, and my brother Dr. Thos. Opie in the fall or winter of 1862, in Confederate money. These two bonds were the ones which fell due on January 1st, 1861, and January, 1862, respectively. The third bond fell due in January, 1863, and was paid in February,

68 1863, in Confederate money, said money having been sent to Staunton through the hands of Chas. H. Lewis, of Jefferson county, W. Va. The fourth bond was paid in January, 1864, in worthless Virginia bank notes.

5 by same. What knowledge, if any, had you at the time—the fall or winter of 1862 and 1863, or either—of the payments of the bonds you have spoken of as being paid then; also, what was your information, if any, as to the kind of money with which they were paid off at the time they were so paid?

Ans. I never was present when one dollar or any other sum was paid by Castleman to my mother or brother. I knew nothing at all about the business of my father's estate. The knowledge I had then in the fall of 1862 and July, 1863, in the county of Jefferson, Castleman offered to pay me one or two of these bonds in Confederate money, which I refused to accept: that I had no authority to accept it, and also that it was worthless. I do not recol-ect when the payments were made except from memoranda and what Castleman told me. I have no knowledge of the bonds being paid

69 at the time they were paid except from he-resay. I do know, however, that said Henry W. Castleman, immediately after my father's death in 1862, bought up large quantities of Confederate money in the county of Jefferson and elsewhere, and willfully, knowingly, and fraudulently came from within the Federal lines into the

Confederate lines and paid this worthless Confederate money and Virginia bank notes to the personal representatives of my father'- estate. This was a matter of public notoriety in the county of Jefferson.

Exception.—It now appearing for the first time that the answers of the witness to this and the next preceeding question were based not upon his own knowledge, but upon information derived from others & what he calls public notoriety, both of said answers are excepted to because hearsay and not responsive to the enquiry.—H. W. Castleman, by att'y.

6. Now state if you remember when you first learned that the payment of the bonds had been made by Henry W. Castle-
70 man, which you say was offered to be paid you in fall of 1862 and July, 1863, and from whom did you get your first information on the subject of them or either of them having been paid.

Ans. I first learned of their payment shortly after they were made. I received my first information from the personal representatives of my father's estate.

7. State how you know these bonds or any part of them were paid in Confederate money and worthles- bank notes of Virginia or either.

Ans. I know that three of the bonds were paid in Confederate money because Castleman told me so, as did also the personal representatives of my father's estate. The payment made in 1864 was made by Mr. Sinclair in Virginia bank notes. I know this because I got a portion of them after the war.

8. State whether or not you were present at the time any of these bonds or any part of them was paid; also whether or not same was paid in Confederate money or Virginia bank notes or either with your approval, knowledge, or consent, or either.

71 Ans. I never was present and never saw a dollar paid, and of my personal knowledge do not know when they were paid, how they were paid, in what paid, except from what Castleman told me. This money was not paid with my consent or approval. I told Castleman that I would not accept this Confederate money, which was worthless, and that I had no right to accept it, as I was not a personal representative of my father'- estate.

9. State, if you know, what was the value of Confederate notes as compared with gold in 1862, in the months of Sept., Oct., Nov., and Dec., 1862, and, if you know, what was their value about the 25th day of Nov., 1862.

Ans. My recol-ections is that gold was worth three to one (1) at that time.

10. State which of your brothers and sisters, if either or any of them, were married in 1862.

Ans. My sister Mary Mead was a miner until January, 1863, the 25 of January, 1863, I think. My brother Jno. N. Opie was also a minor, having been born March 14, 1844.

11th. Of what use was the Confederate money paid by
72 Castleman to the estate of your father; also what was the real value of the Confederate money or bank notes or either to the estate of your father or the distributees of the estate?

Ans. The Confederate money paid by Castleman was put into Confederate bonds, which I saw afterwards. The Virginia money was held until after the war and divided between the heirs, but it was worthless, the Virginia banks having all their money in Confederate bonds, and were so compelled by law. Quite a number of said bank notes were returned to Castleman by my mother after the war. I saw them mailed to Mr. Castleman. The whole was an entire loss to the distributees of my father's estate.

12. The whole of what was an entire loss to the distributees of your father's estate, and how much did they lose in consequence of these bonds?

Ans. The whole of these bonds and Virginia money paid by Castleman. All the payments made by Castleman was an entire loss to my father's estate.

13. What was the condition of your father's estate as to its indebtedness at the time of his death?

73 Ans. It owed nothing.

14. State, if you know, whether or not the Confederate notes or bank notes or either paid by Castleman was ever invested in any way by any one for the benefit of said estate or used for its benefit, or whether they became a loss. State all you know about it not hereinbefore stated.

Ans. The Virginia money was never invested, as I have before stated. The Confederate money was put into Confederate bonds and was a total loss to the estate.

15. State what, if anything, you know about the release of the lien made by Mr. Conrad, trustee, and when did you learn for the first time that a release had been made, if you ever knew of such.

Ans. I never knew that Mr. Conrad was the trustee, as I knew nothing about the business of the estate, which was managed exclusively by mother & brother, who removed to Baltimore shortly after the war, taking with him all papers belonging to my father's estate.

I first knew of the release being on record in Charlestown, Jefferson county, W. Va., in July, 1880, when I visited said county & town. I there found that said release had been put upon
74 record in 1874 by Castleman, which was a release to him from Conrad, trustee, and this was my first knowledge that Conrad was trustee.

16. What do you know, if anything, about the disposition made by the Virginia banks of their means during the war?

Ans. Their means were placed into Confederate bonds. They were compelled to do it by law.

17. What effect did this have upon the condition of the banks?

Ans. It ruined them, and the consequence was their notes were worthless.

18. What, if anything, do you know of the distributees or any

of them consenting to the payment of these bonds or either or any part of either or any of them in Confederate money or Virginia bank notes or either? State all you know upon the subject.

Ans. I know that I did not consent, but protested and did so to Mr. Castleman. My brother John and sister Mary were miners, and consequently had nothing to say. I knew that the personal representatives must have consented, because they alone accepted this money. I had no right to consent, because they were the personal representatives of my father's estate.

19. In what condition were your mother, sister, and brothers left after the war pecuni*ra*-ly?

75 The def't excepts because irrelevant.

Ans. Almost entirely ruined.

20. State, if you know, what was the pecuniary condition of your mother, brothers, and sisters at the close of the war.

The def't excepts on same grounds.

Ans. They were almost entirely ruined by the war.

21. What was the financial condition of the defendant Henry W. Castleman, if you know?

The def't excepts on the same ground.

Ans. All I know is that he owned one of the finest farms in Jefferson county, W. Va., which was well stocked, and I considered him in good financial condition.

22. State, if you know, what set-lements, if any, were ever made by the personal representatives or either of them of your father's estate.

Ans. I know of none. I never heard of one.

23. State when this action was instituted, if you know.

Ans. I believe in December, 1880.

24. State why you did not sooner begin proceedings against the defendant H. W. Castleman for the recovery of the money in this case claimed. State in full all of the particulars in *in* responce to the question.

76 Ans. While I lived near Staunton I did not know the condition of my father's estate, as my mother & brother had all the papers and memoranda of the estate with them in Baltimore, Maryland. I have never seen any of the papers of the estate, but did know that the estate was not in debt. I moved from Staunton, Va., in the spring of 1873, to Covington, Ky. Previous to my removal from Staunton I was absent from the State of Virginia nearly two-thirds of the year 1872. I was deeply embarras-ed, having a large mortgage on my farm in Virginia, and paying twelve per cent. interest on the mortgage money to Gerney, of New York, and was compelled to sell my farm to pay my indebtedness, and had little or nothing left thereafter. I was not, at the end of the war, up to the fall of 1880, financially able to bring this suit or carry it on. Immediately after I became able I instituted the present suit. After going to the county of Jefferson I ascertained for

the first time that R. T. Conrad was trustee of my father's estate and as such had made a release to Henry W. Castleman. Said release was recorded in 1874 in Charlestown, the county-seat of Jefferson county, W. Va. My visit to said county was in July, 1880. I had not visited said county or county-seat since 1866, and had no knowledge, either legal or constructive, of the existance of
77 said deed of release until July, 1880, and, being in a distant State, I presume and assumed that the personal representatives of my father's estate had brought the suit long ago, as they had the whole control of the business and I had nothing whatever to do with it. I have never had any settlement with the personal representatives of my father's estate, and I know none has ever been made with reference to the Castleman bonds.

25. How long have you lived in the State of Ky.?

Ans. Since May, 1873.

26. Where did you reside next before moving to this State?

Ans. Near Staunton, Virginia.

27. How long did you reside there and where did you reside next before being at Staunton?

Ans. Staunton was my home from March, 1861, up to 1873.

28. State, if you know, the distance from Staunton, Virginia, to Charlestown, the county-seat of Jefferson county.

Ans. About one hundred and fifteen (115) miles.

29. State how often you were at Charlestown or the residence of H. W. Castleman between the 1st of January, 1862, and the time you moved away from Staunton, Virginia.

78 Ans. I do not remember being there more than three or four times.

30. About when were these times?

Ands. I was there in March, 1863, in July, 1863, and once some time in 1864. I was there but once after the war, or perhaps twice.

31. Will you please explain what you mean when you say you knew nothing about the affairs of your father's estate or the business of the estate and why it is that you did not know anything about the business of the estate between the dates of the death of your father and the time you left Staunton?

Ans. The reason I know nothing about it was that I had married at Wheeling, W. Va., and taken my wife to Staunton, to my father's house, where she resided for some months, and then went through the Federal lines to Wheeling, W. Va. After remaining there some months she returned to Staunton. I was at that time in the army. My brother, being a surgeon, got transferred to the hospital at Staunton, and thus became on- of my father's administrators. I was away in the war nearly all the time and hence knew nothing of what was going on, and after the war my father's administrators removed to Baltimore, taking all the papers concerning the estate with them, so that while living in Staunton I knew not what
79 had been done, because no settlement had been made, and *and* I had no access to the papers.

32. State whether or not you made any efforts to inform yourself

as to the business of the estate; &, if so, what & why not succes--ively.

Ans. Yes, sir; I did repeatedly, and was told by the personal representatives that it was none of my business, and was refused access to the papers, & never did see the papers or the books.

33. Who were the custodians of the papers you refer to as being refused access to?

Ans. My mother, Mrs. N. S Opie, and Dr. Thos. Opie.

34. Stat- whether or not you at any time in the year 1865 saw and had a conversation with the defendant Castleman in the city of Wheeling, W. Va., in regard to his payment of these bonds or any of them; if so, state in full all that passed between yourself and Castleman on the subject of these bonds; also who, if any one, was present during the said conversation or any part thereof.

Ans. Yes, sir; immediately after the proclamation of President Johnson, in 1865, in reference to the confiscating of property of all men worth $20,000 or over, Mr. Henry Castleman came to Wheeling, W. Va., to get the signature of Gov. Boreman to his
80 amnesty papers, and he called upon me at the house of my brother-in-law, Judge Mitchell. We had several conversations, one at the said house and one at the hotel. In the first conversation I told him he had paid for my father's estate in Confederate money which he had bought up inside the Confederate lines, and that he had borrowed money from his brother, Stephen A. Castleman, in Georgetown, D. C., for the purpose of buying said money to pay his indebtedness to my father's estate, and that he would not have so done had I been a personal representative, as he well knew I would have refused to accept Confederate money. He replied that I had nothing to do with it; that my mother and Thomas were the representatives, and that he was glad I was not. He further said that he did not believe he would have been able to pay for my father's estate had it not been for the war, and that he then had the finest estate in the State of W. Va. He also said, When you all objected to Confederate money did I not pay you all in Virginia money? I replied, That was no account. No one was present during the
81 conversation. Mr. Alddridge was not near enough to hear it. He (Mr. Aldridge) accompanied Mr. Castleman to Wheeling.

X examined by MARSHAL MCCORMICK, counsel for H. W. Castleman, without waiving objections and exceptions heretofore noted:

1. Were you a member of the Confederate army during the whole war?

Ans. I was, sir.

2. Was anybody—if so, who was—present at the time Mr. Castleman paid his bonds or any of them to your mother and brother?

Ans. I do not know.

3. Did he have any difficulty in inducing them to receive Confederate money in payment of his bonds?

Ans. I do not know.

4. Did he appeal to them or persuade them or by any other means, deceptive or otherwise, in order to get them to accept such currency?

Ans. I do not know.

5. Did he employ in Staunton any person or persons to aid him to accomplish his purpose—that is, to induce them to receive Confederate money?

Ans. It is said he employed H. M. Bell, who was the attor-
82 ney for the estate, to induce my mother to accept this money.

6. Who said he employed H. M. Bell to aid him?

Ans. Various persons in Staunton.

7. Can you name any one or more of the various persons?

Ans. I cannot now.

8. Did you ever know their names?

Ans. I did, sir.

9. When did you last recollect their names?

Ans. That I cannot tell.

10. Have you recollected them since the war?

Ans. No, sir.

11. Upon whose information, then, did you make the statement in your bill filed in this case, sworn to by you, that Mr. Castleman did employ various persons in Staunton to enable him to induce the adm'rs to receive from him Confederate money?

Ans. I do not recollect such a statement being in the bill. I have not the bill before me.

12. If there is such a statement in the bill is it true or otherwise?

Ans. It is true my mother stated to me that she was induced to take this money upon the advice of Mr. Bell, who had been
83 consulted by Mr. Castleman in refference to the same, and that she would not have taken this money had it not been for the advice of Mr. Bell.

13. Was not Maj. Bell the counsel of your mother and brother in their official character as adm's?

Ans. Yes, sir; I so understand.

14. Is he the person who conspired with Mr. Castleman to induce the ad'rs to receive Confederate money?

Ans. That I could not say. That I do not know.

15. Then, Col. Opie, I understand you cannot give the name of any person employed by Castleman to aid him, nor the names of any of the various persons in Staunton who told you he did employ persons for that purpose?

Ans. I said I could not recol-ect. I was absent in the army.

16. And if the bill contains such a statement you cannot state whether it is true or not?

Ans. I do not know what the bill contains, but if I made such a statement in the bill it is true.

17. How many bonds were due and unpaid at the time of your father's death? I refer, of course, to the Castleman bonds.

84 Ans. Four (4), I think.

18. Did you not state in your bill in this case that there

were five bonds, viz., fal-ing due Jan'y 1st, 1860, '61, '62, '63, and '64, and that they were all paid in Confederate money?

Ans. I do not remember, as I haven't the *the* bill before me.

19. How do you know Castleman bought up a large quantity of Confederate money in Jefferson Co. and elsewhere for the purpose of paying of- his *band* bonds?

Ans. He told me so. He told me he had sold his wheat and bought Confederate money. Chas. H. Lewis, who is dead, told me so. Dr. Jas. Williams, who is also dead, told me so. Robert Hume Butcher told me so. I do not remember anybody else. It is a matter of public notoriety in Jefferson.

20. How do you know that Castleman knowingly, willfully, and fraudulently went from within the Federal lines into the Confederate lines with this money to pay off those bonds?

Ans. He told me himself that he had bought up Confederate money, and at the time he made these pa-ments the county
85 was occupied by the Federals, and where my mother lived was about 115 miles from Jefferson Co., and he came through the Federal lines into the Confederate lines to make these payments at a time when Confederate money and Virginia bank bills were almost worthless and palmed them off on my mother, who was a widow.

21. Then I understand from these facts you state it as your opinion based upon them that he acted knowingly, willingly, & fraudulently when he paid off his bonds in Confederate money to your mother and brother, who received the same under the advice of their counsel, Maj. Bell?

Ans. There is no opinion about it. It is a fact.

22. What is a fact?

Ans. It is the truth. It is my opinion, based upon the information I have detailed.

23. When and where did you protest to Mr. Castleman against his paying off his bonds in Confederate money? I want time and place.

Ans. In July, 1863, at his house, and I think in the fall of 1862 or the latter part of the summer, I think, at his house, and March, 1863, at his house.

24. Were you at Castleman's house in the latter part of the summer or fall of 1862?

86 Ans. My impression is that I was.

25. In answer to Mr. Tiesdale's 29 question you fix the times of your being at Mr. Castleman'- house as follows: March, 1863, July, 1863, and some time in 1864, but you nowhere in that answer intimate that you were there in 1862. Now, be pleased to say if you are not mistaken when you say you were there in 1862.

Ans. I think I was there in the summer of 1862, since considering the matter.

26. Did Castleman upon the occasion of your visit in 1862 make known to you that he contemplated paying his bonds in Confederate money?

Ans. I do not remember that he did. I don't remember having

any conversation with him except at the times specified in my examination-in-chief.

27. In answer to the 29 ques.-in-chief you fix March, 1863, July, 1863, & some time in 1864 as the time at which you were at Castleman's. In answer to my 24 quest. you say you were also there in 1862 and protested against his using Confederate money, and now and in answer to my 27 quest. you say you do not remember any conversation with Castleman except at the times specified in your ex-
87 amination-in-chief. Now, be pleased to explain what you mean by these answers, and state which is correct.

Ans. I am mistaken about protesting about taking Confederate money in the summer of 1862. I was there but once in 1862. The conversation- I had with him in 1863 and 1864 are just as narrated in my answers to the questions-in-chief.

28. Then you do not remember whether you protested in the summer or fall of 1862 to Mr. Castleman against his using Confederate money in paying of- his bonds. Am I correct?

Ans. Yes, sir; you are correct.

29. Then if you do remember to have made a protest in 1862 such protest only applied to the future payments to be made by Castleman and not to the payments made by him in the fall of 1862?

Ans. I do not know. I do not remember whether I protested or not. If I made the protest in 1862, I made it to apply to all payments, past and future, in Confederate money or Virginia bank notes.

30. Did I not understand you just now to say that you gave no consent to Mr. Castleman's paying Confederate money except
88 a forced consent. If I am correct, will you say who forced you to consent and how such consent was given?

Pl'tiff excepts to the question.

Ans. I said if I did give consent to Mr. Castleman it was a forced consent. If I did give consent it was done through the urgent request and entreaties of my mother. I do not recol-ect that I ever gave such consent.

31. Now, be pleased to say whether you did give such consent, either forced or voluntary, at the earnest entreaties of your mother.

Ans. I do not remember.

32. Then what do you mean when you say that if you did give such consent it was a forced consent and done through the urgent entreaty of your mother?

Ans. Frequently during the war my mother begged me to take the money, as it would be unpatriotic not to take it and unbecoming a Southern man to go back on his country, when I would protest against accepting this Confederate money in payment of the Castleman bonds, which frequently occurred.

33. Can you recol-ect whether you yielded to the earnest
89 entreaty of your mother and did give your consent?

Ans. I do not remember; I may have done so.

34. Do you remember the fact that you did not yield to her entreaty and give consent?

Ans. I do not remember.

35. Now, Col. Opie, as a matter of fact, did you not approve of the payment made by Mr. Castleman in 1862, and did you not endorse your approval on the two bonds paid off by him?

Ans. I do not remember, but if I did I did it under protest, as I have before stated.

Objection by pl't'ff to question and answer.

36. In 1862 what was the currency and only currency in Staunton and other parts of the Confederacy?

Ans. In 1862 the only currancy in Staunton was Confederate money. That was my recollection.

37. Was it not used there in payment of debts and as a purchasing medium?

Ans. Yes, sir.

38. Are you positive in your recollections that the bond falling due Jan. 1, 1863, was paid in Feb'y of that year in Confederate money?

Ans. Yes, sir; and the last payment was made in Virginia bank notes.

90 39. How do you know it, or do you state it as a fact of your own personal knowledge or from information derived from others?

Ans. I got that information from Castleman. There were three of the payments made in Confederate money. I know this partially from my own knowledge and partially from information derived from others.

40. What part do you state of your own personal knowledge and how much upon information derived from others?

Ans. My information was derived from the personal representatives. I have no personal knowledge about it except such as was derived from the books and personal representatives.

Objected — by def't because witness' statements — all as to payment of bonds derived from information given him by others, &c., &c.

41. Col. Opie, are you not a lawyer, and, as such, do you not know that hearsay evidence is not admissible?

Objection by pl't'ff.

Ans. I am a lawyer and know that hearsay evidence is not admissible.

91 42. Then may I ask you why have you stated matters not of your own personal knowledge, but upon information of others?

Ans. Some matters I have stated upon information and some from personal knowledge. Some facts I did not know of my own personal knowledge, others I did, but most of the facts I have stated

were kindly furnished me by Mr. Castleman himself, the def't in the case.

43. In you- examination-in-chief you have stated and reiterated that you never did consent to the payment by Castleman of his bonds in Confederate money, and in your cross-examination you have stated more then once that if you did consent it was under force—at the earnest entreaty of your mother. Will you be pleased to say which is correct?

Ans. I do not remember that I ever did consent. I protested from first to last.

44. Then I do not understand you as saying positively that you did not consent. Am I correct?

Ans. I say that I do not remember to have ever consented.

45. If you had endorsed your approval upon the bonds would you be likely to forget it?

92 Ans. Yes, sir; I may have forgotten it. If I did, I say, as I said before, I did it unders protest; but I do not remember doing it.

Re-X:

1. Now what is your best recol-ection on the subject of having consulted to the payment of these bonds or any part of either of them in Confederate money or Virginia bank notes? State as to this matter and nothing else.

Objection by def't.

Ans. My best recollection is that I never did consent. I always protested against the acceptance of one dollar of Confederate money or Virginia bank notes.

2. What is your best recollection with referance to having endorsed your approvel or any endorsement whatever upon the bonds mentioned in the cross-examination?

Ans. I do not remember ever having done so; that is my best recollection.

3. State whether or not among the answers to questions which were based on hearsay the only ones of hearsay were admissions made by defendant, which you treated as matters within your personal knowledge; if not, explain how otherwise.

93 & 94 Ans. That is so. The answers I stated as facts I obtained from the def't Castleman.

(Signed) H. L. OPIE.

Endorsed as follows:

H. L. Opie *vs.* Henry W. Castleman *et al.* Deposition of pl'tff. Filed May 16th, 1887. Test: Jasper Y. Moore, clerk D. C. U. S., D. W. Va.

95 *Defendants' Depositions. Filed May 16th, 1887.*

JAMES SINCLAIR, a witness of lawful age, being first duly sworn, deposes & says as follows:

1st question by said Marshall McCormick. Be pleased to state your name, age, and residence.

Ans. James Sinclair; I am 85 years of age; residence, Jefferson Co., W. Va.

2nd Q. by same. Will you state whether or not you paid off any one or more of the bonds of H. W. Castleman to H. L. Opie, Sr., dec'd, given for the purchase-money of the farm he now owns; if so, for whom you made such payment, to whom you made and the kind of currency in which you paid it?

96 Ans. I paid off one bond, the last bond. I paid it for Henry W. Castleman. I paid it to the personal representatives of Hirome L. Opie, who were Mrs. Opie & Thomas Opie. I paid it in Virginia currency, all.

3rd Q. by same. Will you state, if you can, the time, day, month, and year at which you made the payment, and also who furnished you the money used in the payment?

A. I made the payment Jan'y 4th, 1864. Henry W. Castleman furnished me the money.

4th Q. by same. You say you paid the bond in Virginia currency. Will you explain more explicitly what you mean by Virginia currency?

A. It was old Virginia bank money.

5th Q. Were both of said personal representatives present at the time of payment, and will you say in this connection whether or not they or either of them hesitated or offered any objection to receiving payment of the bond in the currency you offered?

A. Only Mrs. Opie at the time. I handed it over to Mrs. Opie at the bank, where it was received and counted by one of the officers of the bank, either cashier or teller, I can't recollect which. Dr. Opie, Mrs. Opie, and myself were together that time, and that evening, after the payment of the bond, he endorsed the receipt on

97 it. They offered no objection to receiving the money or giving up the bond. They received it freely and voluntarily.

6th Q. by same. Will you state now whether the said personal representatives gave you any paper to be handed to Mr. Castleman, directing the trustee in the deed of trust given to secure said bond to release the same; if so, will you say what said paper was, who prepared it, what you did with it, and whether or not you held out any inducements or used any persuasion to procure the paper?

A. They gave me an order to the trustee to execute a deed of release, which order I handed over to Mr. Castleman. Thos. Opie wrote the order. I used no persuasion whatever; it was done right along; nothing said as to it; no comments on it. They did it without hesitation or objection.

7th Q. by same. Will you state, if you can, what was the only or principle currency in circulation in the fall or winter of 1862 in

Jefferson and the adjoining counties? And state your opportunities for knowing as to it.

A. Confederate money was the principle currency. It was bankable—that is, it was received in bank—and readily received on the purchase of supplies and in the payment of debts. I was appointed by the corporation of Leesburg, in Loudoun Co., Va., which
98 adjoins Jefferson Co., W. Va., to redeem such of its currency as was brought to me for redemption. I redeemed about 15,000 with Confederate money. I left Loudoun Co. in August, 1862, and came to Jeff. Co., Va., and Confederate money was passing as currently there as in Loudoun.

8th Q. Will you say whether or not in the fall of 1862 and in the winter of that year such Confederate money was much, if any, depreciated in value?

A. I think not.

9th Q. Was or not any talk had between you and Mrs. Opie and Thos. Opie or either of them touching the payment of the other bond, which had matured before and been paid off? If so, will you say whether any complaint was made by them or either of them as to the currency used in this payment?

A. I think we had no talk about the previous payments. I heard no complaint in the world.

And further saith not.

JAS. SINCLAIR.

WM. D. SMITH, a witness of lawful age, being first duly sworn, deposes & says:

1st Q. by said McCormick. Please state your name, age, and place of residence, how — your residence is from the Jefferson county
99 line, and how far from the residence of H. W. Castleman.

A. Wm. D. Smith is my name; age, 66 years; residence, Clarke Co., Va. My house is not more than a quarter of a mile from the Jefferson Co. line, immediately on the line between the two States; about 1½ miles from H. W. Castleman. A large portion of my land is in Jefferson Co.

2nd Q. by same. Do you know anything of a loan having been made by your father, the late E. I. Smith, now dec'd, to H. W. Castleman in 1863? If so, will — say about how much the loan was and in what kind of currency it was made?

Ans. I don't recollect the amount; it was large, however. I understood that he wanted it for the purpose of paying his bond to Hirome L. Opie; various old Virginia bank currency accumulated by my father before and at the beginning of the war.

3d Q. by same. Will you state, if you can, what was the chief currency in circulation in the fall and winter of 1862?

A. Confederate money, in my opinion. There was some Virginia money. It—Confederate money—was the general currency; it was generally received throughout the country. We took it and passed it.

And further saith not.

WM. D. SMITH.

100 HENRY W. CASTLEMAN, a witness of lawful age, being first duly sworn, deposes and says:

1st Q. by said McCormick. Be pleased to state your name, age, and place of residence, and whether or not you are the same person who is a defendant in this cause.

A. H. W. Castleman is my name; age, 60 years; resident of Jefferson Co., W. Va.; I am the same person who is the def't in this cause.

2nd Q. by same. State, if you can, which of the armies, Federal or Confederate, had possession of Jefferson county, Virginia, now W. Va., in 1862, 1863, & 1864. State all you know about it.

Ans. Both armies had possession of the county alternately and at irregular periods. Sometimes one armie would have possession of it one day and the other the next.

3rd Q. by same. Was there or not any period of time during these years when there was not easy communication between citizens living in Jefferson Co. and Augusta Co., Va., and other counties in the State?

Ans. There was no difficulty in passing between the two places. There was constant communication from my house and Staunton. I went out myself and experienced no difficulty.

4th Q. Will you state whether or not you were in debt to
101 Hirome L. Opie, Sr., since dec'd, at the time of his death? If so, in what sum or sums of money; how the same were evidenced; what was the origin of said indebtedness. Please state in detail.

A. I was indebted to Hirome L. Opie at the time of his death on four bonds, each for the sum of $3,622.27, due Jan'y 1st, 1861, Jan'y 1st, 1862, Jan'y 1st, 1863, and Jan'y 1st, 1864, with interest from Jan'y 1st, 1861. There were the last four purchase-money bonds for land purchased of said Opie. The other bonds I had paid to him before his death.

5th Q. Now, be pleased to state whether or not you paid off said bonds. If so, to whom did you make such payment, about the time or times of such payment, and the kind of currency used in their payment? State in detail.

Ans. I paid off the bonds due Jan'y 1st, 1861, and Jan'y 1st, 1862, in the fall of 1862, together with the interest on the other two bonds. I paid those two bonds principally in Confederate money and a part in Virginia money. Since filing my answer in this cause I have ascertained that I used Virginia bank money in part on their payment, in reflecting about the matter and in conversations with my wife. I was reminded that at the time I borrowed $1,100 of Col. Morgan in Virginia bank money, which I used in paying off said
bonds, and I think, besides this, I had of my own other Va.
102 bank money which I used in that payment. The bond which fell due Jan'y 1st, 1863, was paid for me by my neighbor, Mr. Chas. H. Lewis. He was going to Richmond through Staunton about that time, and I furnished him with Va. bank paper with which to pay off said bond. I borrowed the money from Mr. E. I.

Smith, now dec'd; gave it to Mr. Lewis, and on his return from Richmond he brought me the bond. This bond was paid Feb'y 1st, 1863. The bond which fell due Jan'y 1st, 1864, was also paid in Va. bank paper by Mr. James Sinclair. This money came from the sale of my crops and other produce from my farm. The two first bonds were paid to Mrs. Nannie S. Opie, who is one of the personal representatives of H. L. Opie. The other two were paid by Mr. Chas. H. Lewis and Mr. Jas. Sinclair, respectively, and I presume was paid to Mrs. Opie or Dr. Thos. Opie or both of them. Each of them brought back to me the bond he had paid off.

6th Q. Where did you get the Confederate money used in the payment of the bonds which matured Jan'y 1st, 1861, and Jan'y 1st, 1862?

Ans. I sold my produce for it in part. A large portion of it came from the proceeds of the sale of a part of this same land,
103 which I sold Mr. Joe Myers. I rec'd it from him and used it in the payment of said bonds.

7th Q. by same. Will you state whether or not you ever "bought up" a large or any amount of Confederate money to be used on the payment of the said bonds or either of them?

Ans. I never bought up any Confederate money in my life to be used in the payment of these or any other bonds. The Confederate money which I used was rec'd in the regular and legitimate course of my farming operations and from the sale of a part of my land to Jas. Myers.

8th Q. In answer to my 5th question you have stated that the bonds which matured on the 1st days of Jan'y, 1663 & 1864, were paid off in Virginia bank money. Now, will you be more explicit and say what you mean by Virginia bank money?

Ans. It was the old Virginia bank paper upon various banks issued prior to the war.

9th Q. Will you say whether or not there was any hesitancy on the part of Mrs. Opie or Thos. Opie or either of them to receiving payment of the bonds which fell due Jan'y 1st, 1861 & 1-62 in Confederate & Virginia money, as you have stated, or was any objection made to it or did you see any indications of hesitancy or objection on their part?

104 Ans. There was no hesitation on the part of either of them or any one else. They made no objection whatever. I saw no indication of any hesitancy or objection on the part of either of them. They received it freely and voluntarily.

10th Q. Why did you not also pay off with Confederate money the other two bonds which matured Jan. 1st, 1863, & Jan. 1st, 1864.

Ans. At the time I paid off the bonds of Jan'y 1st, 1861, and Jan'y 1st, 1862, I asked them the question whether I should go home and make sale of my crops to make ready to pay the next bond. I also asked them whether they would be willing to take it in Confederate money. They said that they would. I disposed of my wheat crops raised in 1862 and other produce I had for sale for Confederate money and thus raised the amount of money necessary to pay off the bond due Jan'y 1st, 1863. A short time before the bond

matured I rec'd notice from them stating they would object to taking Confederate money and demanded payment in Virginia bank money. Having sold my crops and produce for Confederate money, and the bond about due, I borrowed the money from Mr. E. I. Smith to pay off the whole of said bond.

105 11th Q. Did you or not while in Staunton or at — other time employ any person or persons to aid you in inducing them to receive payment of said bond either in Confederate or Virginia money or did you in person or with the aid of others or by any other means, deceptive or otherwise, try to persuade or induce them or either of them to receive said money?

Ans. I did not, sir. I neither employed nor spoke to any one concerning it.

12th Q. Will you state whether or not Maj. H. M. Bell, an att'y in Staunton, was ever employed by you for any such purpose as is indicated in my last question or for any other purpose?

Ans. I never knew Mr. Bell and never employed him in any way, and would not know him now if I were to see him. I have understood that he was the counsel for Mrs. Opie.

13th Q. Please state what knowledge, if any, the complainant, H. L. Opie, has of such payments, particularly of the payment of the two bonds in the fall of 1862.

Ans. He was present at the time when I paid the money in 1862 at his mother's house, near Staunton, and counted the money over for his mother.

14th Q. Did he or not manifest any approval or disapproval of said payment?

106 A. He knew of the payment and he consented and approved of it.

15th Q. Where was Mrs. Opie living in 1862, '63, '64, and who composed the family?

Ans. She lived at the residence of her husband, dec'd, near Staunton. Her family consisted of herself and four children, and I think Hite Opie's family were living with her also.

16th Q. Did or not said H. L. Opie at the time of your payment of said bonds in 1862 or at any other time in your presence or to your knowledge protest against his mother's receiving Confederate money in payment of your bonds?

Ans. He did not protest against it at any time; he never did to me; on the contrary, he approved of it.

17th Q. Do I understand you then correctly, Mr. Castleman, to say in brief that two of these bonds—those maturing on the 1st days of Jan'y, 1861 & 1862—were paid in Confederate money in part and Virginia bank money in part; that such payment was made in the presence, with the knowledge, full consent, and approval of the complainant; that the other two bonds were paid in Virginia bank money issued by various banks prior to the war, and that the payment of the two last-named bonds was demanded by the personal representatives of H. L. Opie, dec'd, in such Virginia money,

107 and that you complied with their demand?

Ans. You do understand me correctly, sir.

18th by same. At the time of your payment of said two bonds, in the fall of 1862, what was the principle currency in circulation in Jeff. and the adjoining counties; and in this connection will you say whether such currency was or was not readily received by home people in the purchase of supplies & in the payment of debts?

Ans. Confederate money in that section of the country was the principle currency, and was readily received in the payment of debts and for the purchase of land and property and in bank. I sold before the war a part of the land I bought of Mr. Opie to Jos. Myers and Wm. Morris, who married an aunt of the compl't, and I received a large portion of their purchase-money bonds in Confederate money, which I used in paying off the bonds of 1861 and 1862.

19th Q. State whether or not in the fall of 1862 Confederate money was much, if any, depreciated, & explain what you mean by saying that it was readily received.

Ans. I knew of no depreciation of the money at that time. It was rec'd at par just as any other money.

108 20th Q. H. L. Opie in his deposition says that in the fall of 1862 and in July, 1863, you offered to pay him one or more of your land bonds, and that he declined to receive the money because he had no authority and because also the money was worthless. Will you state whether or not you made such an offer or he such a refusal at that or any other time?

Ans. I never made such an offer and he never made such a refusal at any time.

21st Q. Will you say whether or not you ever told said H. L. Opie that you had paid three (3) of your land bonds in Confederate money?

Ans. I never did, sir, because I never paid three of them in Confederate money. I paid them as have stated heretofore.

22nd Q. Will you state under what circumstances and from whom you received the order directing Mr. Coarad, trustee in the deed of trust given to secure your land bonds, to give you a deed of release?

Ans. The last bond was paid by Mr. Sinclair, who brought me the order, drawn by Thos. L. Opie, and signed by himself and mother. I told Mr. Sinclair when he paid the bond off to bring me an order for a deed of release of the trust.

23rd Q. State whether or not any claim or demand was ever made upon you by the compl't or any one else for payment of said

109 bonds or any of them paid by you to the personal representatives, as you have stated, and did you ever have any notice of or reason to believe that there was any dissatisfaction with the settlement you had made with said per'l rep't?

Ans. There never was any demand made upon me by any one. I never had any notice or intimation of any dissatisfaction with my settlement until this suit was brought, which was nearly seventeen years after I had paid my last bond.

24th Q. Have you or not sold any part of the land you bought of Mr. H. L. Opie? If so, how much and to whom?

Ans. I have sold a portion of the land I bought of H. L. Opie.

W. Castleman; H. D. Littlepage & Emily C., his wife, formerly Emily C. Castleman; Logan Osborne & Mary, his wife, formerly Mary Castleman; J. S. Powers & Estelle, his wife, formerly Estelle Castleman; John S. A. Castleman, Henry W. Castleman, Jr.

And the original papers in the cause having been lost or mislaid, and diligent search having been made for them without finding them, this day came the parties, by their attorneys, and filed copies of the original bill filed in the cause, and also copy of the original answer of the said Henry W. Castleman, and also copies of the original depositions taken in the cause and filed therein, to wit, the depositions of the said Henry W. Castleman, also the depositions of James Sinclair, Wm. D. Smith, & R. Hume Butcher, taken for the defendant Castleman, and also the deposition of the plaintiff Opie; and thereupon it is agreed by the parties, by their attorneys, that this cause may proceed and be heard by the court upon said papers as filed as if they were the original papers in said cause and as if the original papers had not been lost; and this cause thereupon came on to be heard this day upon the bill and exhibits filed therewith, upon the demurrer to the bill & jurisdiction, upon the answer of Henry W. Castleman and replication thereto, the answer of S. W. Washington, administrator of Henry W. Castleman, this day filed, and replication thereto, and the said depositions of witnesses, &c.

116 H. L. OPIE *vs.* H. H. CASTLEMAN'S ADMINISTRATOR and Others. } Order and Decree. Entered September 30th, 1887.

Henry W. Castleman, the original defendant in this cause, being dead, by consent of the parties, by their attorneys, this cause is revived and ordered to proceed against S. W. Washington, administrator of Henry W. Castleman; Mrs. D. Castleman, widow of said Henry W. Castleman; H. B. Littlepage and Emily C., his wife, formerly Emily C. Castleman; Logan Osborne and Mary, his wife, formerly Mary Castleman; J. S. Powers and Estelle, his wife, formerly Estelle Castleman; John S. Castleman, and Henry W. Castleman, Jr., and the original papers in the cause having been lost or mislaid, and diligent search having been made for them without finding them, this day came the parties, by their attorneys, and filed copies of the original bill in the cause and a copy of original answer of the said Henry W. Castleman, and also copies of the original depositions taken in the cause, to wit, the depositions of said Henry W. Castleman, James Sinclair, William D. Smith, and R. Hume Butcher, taken for the defendant Castleman, and also the depositions of the plaintiff Opie; and thereupon it is agreed by the parties, by their attorneys, that this cause may proceed and be heard by the court upon the *upon the* said papers as if they were original papers in said cause and as if the original papers had not been lost; and this cause thereupon came on to be heard this 30th day of September, 1887, upon the bill and exhibits filed therewith, the de-

117 murrer to the bill and joinder therein, the answers of said Henry W. Castleman and of Mary Meade and the answer of S. W. Washington, administrator as aforesaid, and replications to the said answers, and the said depositions of the said witnesses, and was argued by counsel. Upon consideration whereof the court is of opinion and doth decide that, except to the extent hereinafter named, the payments made by Henry W. Castleman of his four bonds to Hiram L. Opie, the father of the complainant, which bonds, dated January 1st, 1886, *and* due and payable respectively on the first days of January, in the years 1861, 1862, 1863, and 1864, and secured by the deed of trust to Robert Y. Conrad, trustee, which payments were made to the administrators of said Hiram L. Opie, were illegal, invalid, and void, and that the attempted release made by said deed of trust is also invalid and of no effect, but inasmuch as Mrs. Nannie S. Opie, the widow of said H. L. Opie, and Thomas Opie, one of his distributees and heirs-at-law, acquiesced in and consented to such payments to the extent of their interests respectively in said bonds — are valid and legal, and to that extent operated to discharge said bonds; and the court, now proceeding to fix said interests, decides that the interest of the said Nannie S. Opie is one full third of the interest and principal of the said bonds, and that the interest of the said Thomas Opie is one-fourth of the remaining two-thirds thereof; and the court is further of opinion that the shares of said bonds due respectively to the complainant, H. L. Opie, and to John N. Opie and to Mary Meade, being one-fourth each of two-thirds of said bonds, are still due and payable from Henry W. Castleman's estate, and that the deed of trust given as aforesaid to Robert Y. Conrad, trustee, to secure the said bonds is a
118 valid and subsisting security therefor, notwithstanding the said release, and that the same should be enforced for the benefit of said interests of said complainant and of said John N. Opie and of said Mary Meade, to wit, one-fourth each of said four bonds, each for the sum of $3,622.27, with interest from January 1st, 1861, up to which time the interest was properly paid to said H. L. Opie in his lifetime; and the court, thus settling the principles of the cause, doth adjudge, order, and decree that the said release made by the said Robert Y. Conrad, trustee, be set aside and declared to be null and of no effect to the extent of the said interests of the said complainant and of the said John N. Opie and of the said Mary Meade as fixed as aforesaid, and this cause is now referred to Alfred Rhinestrom, one of the commissioners of this court, who is directed to ascertain the amount due respectively to the complainant and to said John N. Opie and to said Mary Meade as established by this decree, and he will also ascertain any other lien or liens, whether by judgment, deed of trust, or otherwise, binding upon the lands in the bill and proceedings mentioned, and he will make report of his action hereunder, stating also such matters as he may deem pertinent or either party may require him to state in order to a final decree. In executing this order the said commissioner will give notice to the parties and such lienors of the time and place of his proceeding to execute this order by publication for four suc-

cessive weeks in some newspaper published in Jefferson county, in the district and State of West Virginia.

119 And leave is given John N. Opie to file his answer within sixty days from this date; and the defendants desireing an appeal from this decree to the Supreme Court of the United States, said appeal is allowed upon the defendants or some one for them entering into bonds before the judge of this court in ths sum of three thousand dollars, conditioned that the said defendants shall duly prosecute their said appeal with effect and, moreover, pay the amount of costs and damages rendered and to be rendered in case the said decree shall be affirmed.

JACKSON, *Judge.*

Sept. 30th, 1887.

Endorsed as follows:
Enter. Jackson, judge.

120 And be it further remembered that at November rules, 1887, John N. Opie filed his separate answer, which is in the words and figures following, to wit:

Answer of John N. Opie.

The separate answer of John N. Opie to a bill in chancery filed against him and others in the district court of the United States for the district of West Virginia by H. L. Opie.

This respondent, for answer to said bill or so much thereof as he is advised it is necessary for him to answer, answering, says that it is true he is a child and one of the heirs-at-law of the said Heirome L. Opie, deceased; that his father died in the county of Augusta, in the State of Virginia, about the month of June, 1862, and during the time of the late civil war between the States, and that he died intestate, leaving his widow and the children named in the bill; that at the time of the death of his said father he, this respondant, was an infant, then about the age of seventeen years.

Respondant admits that his mother, Nannie S. Opie, and his brother, Thomas Opie, qualified as the administratrix and ad-

121 ministrator of the estate of his father in the month of November, 1862, in the said county of Augusta and State of Virginia, and that they have never made any settlement of their accounts as such fiduciaries, nor has either of them nor have they or either of them in any way accounted to this respondant, particularly about the matters and things named and set forth in this bill. Certainly he has never been accounted with for or on account of any of the bonds given by Henry W. Castleman to his father named in the bill. Respondent had been informed before his father's death, as he now remembers, that said Castleman had bought his father's farm in Jefferson county; but, being an infant, he knew very little about the alleged payments in Confederate money to the administrators or the payments in Virginia bank notes, and that he in no way authorized or consented to the said indebtedness being

paid off, either in Confederate money or in the bank notes of the old banks in Virginia which issued promises to pay money or in any kind of depreciated currancy. Respondent says that he in no way authorised the administrators or either of them to receive such money, and in no way since has he ratified the receipt of such money by the administrators. Respondent says that he never in any way enjoyed any such payments or
122 in any way ratified such payments after he arrived at the age of twenty-one years or at any other time. Respondent never received any of said Confederate money in payment of his part or share of the said Castleman indebtedness, and he insists that great injustice has been done to him in the premises, which injustice he asks may be corrected, and he prays that the release named in the bill may be set aside and declared, in so far as he is interested in said Castleman bonds, to be of no effect, and that he may have full relief by the sale of the land conveyed to Robert Y. Conrad, as trustee, to secure the said bonds.

Respondent says that once before, some years since, he filed an answer substantially the same as this in this cause, but he has been informed that it was mislaid or lost, and he now desires to file this answer and to insist that he should be paid in full his share of said bonds given by Castleman, which were due and payable in 1861, 1862, 1863, and 1864; and now, having answered, he prays to be hence dismis-ed.

JOHN N. OPIE.

123 STATE OF VIRGINIA, }
County of Augusta. }

I, William A. Burnett, notary public in and for said county, in said State, do certify that John N. Opie, the defen-ant named in the foregoing answer, this day personally appeared before me and made oath that the matters and statements contained in the foregoing answer are true.

Taken, sworn, and subscribed before me this 1st day of November, 1887.

[Seal William A. Burnett, Notary Public, Augusta Co., Va.]

WILLIAM A. BURNETT,
Notary Public for Augusta County, Va.

Endorsed as follows:

H. L. Opie *vs.* H. W. Castleman. Answer of John N. Opie. Filed at Nov. rules, 1887. Test: Jasper Y. Moore, cl'k D. C. U. S., D. W. Va.

124 *Notice of Lien. Filed November 26th*, 1887.

To S. W. Washington, administrator of H. W. Castleman, deceased; Mrs. H. D. Littlepage, Mrs. Logan Osborne, Mrs. Estelle Powers, John S. Castleman, and Henry W. Castleman, Jr.:

At the last term of the district court of the United States for the

district of West Virginia, in this city, the said court decided the principles involved in the cause of H. L. Opie against Henry W. Castleman's administrator and others. I desire to notify you and each of you of the lien for my fees as counsel and attorney for H. L. Opie, John Opie, and Mary Meade upon their and each of their interests appearing in the said cause and upon any amount which may be now or hereafter coming to them or either of them growing out of the subject-matter of the said suit. The fees I thus claim amount to one-third of the interests of the said H. L. Opie, John Opie, Mary Meade and each of them in said suit named; and I notify you not to agree to any compromise or settlement of the matters involved in the said suit without my consent and without the settlement of my fees as counsel and attorney for the said H. L. Opie, John Opie, and Mary Meade in said suit and about the matters therein involved.

Yours, &c., ROBT WHITE,
Counsel & Attorney as Aforesaid.

Wheeling, W. Va., Nov'r 25th, 1887.

Endorsed as follows:
Filed Nov. 26th, 1887. Test: Jasper Y. Moore, clerk.

125 *Deed of Trust Mentioned and Described in the Bill and Filed Therewith.*

This deed, made the first day of January, in the year eighteen hundred and fifty-six, between Henry W. Castleman, of the one part, and Robert Y. Conrad, of the other part, witnesseth: That the said Henry W. Castleman doth grant unto the said Robert Y. Conrad the following property: All that tract of land lying on the west side of the Shenandoah river in the county of Jefferson, State of Virginia, formerly occupied by said Opie, including the mill property and appurtenances, containing, by Brown's recent survey, five hundred and ninety-six acres; also a tract of land in said county lying on the east side of said river and supposed to contain about four hundred and nineteen (19) acres, all of
126 which property hath by deed of this date been conveyed by said Opie and wife to Henry W. Castleman; to which deed, on record in said county, reference is made for a more particular description of the lands herein conveyed, this being the deed of trust on the property sold, which, by agreement, the vendee is bound to give for security of the deferred payments of purchase-money in trust to secure Hirome L. Opie and his assigns the punctual payment of the following obligations, which have been given for the deferred payments of purchase-money aforesaid, namely:

1st. The single bill of Henry W. Castleman to said Opie or order, dated this day, payable on or before the 1st day of January, 1857, with interest from date, for $5,000.00.

2nd. The single bill of same to same, same date, payable 1st January, 1858, with interest payable annually, for $5,000.00.

3rd. Single bill of same to same, same date, payable 1st January, 1859, with interest payable annually, for $3,622.27¾.

4th. Single bill of same to same, same date, with interest payable annually, due 1st January, 1860, for $3,622.27¾.

5th. Single bill, same to same, same date, with interest payable annually, due 1st January, 1861, for $3,622.27¾.

127 6th. Single bill, same to same, same date, with interest payable annually, due 1st January, 1862, for $3,622.27¾.

7th. Single bill, same to same, same date, with interest payable annually, due 1st January, 1863, for $3,622.27¾.

8th. Single bill of same to same, same date, with interest payable annually, due 1st January, 1864, for $3,622.27¾.

And also in trust to secure the punctual payment annually of the interest which shall from time to time accrue upon said obligations or any of them and remain unpaid.

Said trustee, in case a sale is required, shall have discretion to sell the whole or to have laid off so much as may be necessary in his opinion, and in case any of the principal debt shall not be due at the period of such sale he may sell on such credits as he may deem proper, so as to provide for the payment of principal and interest of said obligations according to their terms.

Witness the following signature and seal.

H. W. CASTLEMAN. [SEAL.]

VIRGINIA, } *sct:*
Jefferson County, }

CLERK'S OFFICE OF THE COUNTY COURT.

On the 2nd day of January, 1856, the foregoing deed was acknowledged before me by Henry W. Castleman and admitted to record.

128 A copy. Teste: T. A. MOORE *Clerk.*

Teste:

THOMAS A. MOORE,
Clerk of the County Court of Jefferson County,
State of West Virginia,
By GERARD D. MOORE, *Deputy.*

STATE OF WEST VIRGINIA, } *sct:*
Jefferson County, }

CLERK'S OFFICE OF THE COUNTY COURT.

I, Thomas A. Moore, clerk of said court within and for the said county of Jefferson, State of West Virginia, do certify that the foregoing is a true copy of the deed of trust from Henry W. Castleman to Robert Y. Conrad as now appears from the records now on file in my said office.

Given under my hand and the seal of said court, at Charlestown, in said county, this 26th day of October, 1887.

[Seal Jefferson County, West Va.]

THOMAS A MOORE.
Clerk as Aforesaid,
By GERRARD D. MOORE, *Deputy.*

STATE OF WEST VIRGINIA, *Jefferson County,* } *sct:*

I, Wm. H. I. Lewis, president of the county court of the said county of Jefferson, in the State of West Virginia, do hereby certify that Thomas A. Moore (by Gerard D. Moore, deputy), whose
129 name is signed to the foregoing certificate, was at the time of so doing and still is clerk of the county court of said Jefferson county, in the State of West Virginia, duly elected and qualified as such, and, further, that said attestation is in due form.

Given under my hand this 29th day of October, 1887.

W. H. I. LEWIS,
President of County Court.

Endorsed as follows:

Henry W. Castleman to Robert Y. Conrad. Deed of trust. A copy.

130 *"Release" of Foregoing "Deed of Trust" Mentioned and Described in Bill, &c., and Filed Therewith.*

This deed, made this seventh day of September, in the year 1865, between Robert Y. Conrad, of Winchester, Virginia, of the first part, and Henry W. Castleman, of Jefferson county, Virginia, of the other part, witnesseth:

That whereas on the first day of January, in the year 1856, a certain Hirome L. Opie did grant unto said Henry W. Castleman certain tracts of land in Jefferson county, lying on both sides of the Shenandoah river, one the place of his residence and the other his mountain tract, both of which are described by metes and bounds in said deed recorded in said county; and whereas on same day said Castleman did grant unto said Robert Y. Conrad the same tracts of land in trust to secure the payment of cer-
131 tain bonds given for the purchase-money to Opie, the last of which was payable the 1st January, 1864; and whereas said Castleman hath produced to said Conrad the last one of said bonds, paid and canceled, and also a paper signed by Thomas J. Opie, adm'r, and N. S. Opie, adm'x, of said Heirome L. Opie (who has deceased), acknowledging the payment in full of all said purchase-money and requesting a releas- of said deed of trust:

Now, in consideration of the premises, the said Robert Y. Conrad doth release unto the said Henry W. Castleman all his, said Conrad's, claim upon the said tracts of land by virtue of said deed of trust.

Witness the following signature and seal.

ROBERT Y. CONRAD. [SEAL.]

FREDERICK COUNTY, *To wit:*

I, George F. Miller, a justice of the peace for the county aforesaid, in the State of Virginia, do certify that Robert Y. Conrad, whose name is signed to the writing above, bearing date on the 7th

day of September, 1865, acknowledged the same before me in my county aforesaid.

Given under my hand this 8th day of September, 1865.

GEO. F. MILLER, *J. P.*

WEST VA., }
Jefferson County. }

RECORDER'S OFFICE.

132 On the 10th day of February, 1871, the foregoing release was produced, duly certified for record, admitted, and ordered to be recorded.

Teste:

JAMES D. FAYMAN, *Recorder.*

A copy.

Teste:

THOS. A. MOORE,
Clerk of the County Court of of Jefferson County,
State of West Virginia,
By GERARD D. MOORE, *Deputy.*

STATE OF WEST VIRGINIA, }
Jefferson County, } *sct:*

CLERK'S OFFICE OF THE COUNTY COURT.

I, Thomas A. Moore, clerk of said court within and for the county of Jefferson, State of West Virginia, do certify that the foregoing is a true copy of the release from Robert Y. Conrad to Henry W. Castleman as now appears from the records of a former recorder of said county, which said records are now in my custody as clerk as aforesaid.

Given under my hand and the seal of said court, at Charlestown, in said county, this 26th day of October, 1887.

[CO. SEAL.] THOMAS A. MOORE,
Clerk as Aforesaid,
By GERARD D. MOORE, *Deputy.*

133 STATE OF WEST VIRGINIA, }
Jefferson County, } *sct:*

I, Wm. H. I. Lewis, president of the county court of the said county of Jefferson, in the State of West Virginia, do hereby certify that Thomas A. Moore (by Gerard D. Moore, deputy), whose name is signed to the foregoing certificate, was at the time of so doing and still is clerk of the county court of said Jefferson county, in the State of West Virginia, duly elected and qualified as such; and, further, that said attestation is in due form.

Given under my hand this 29th day of October, 1887.

W. H. I. LEWIS,
President of County Court.

Endorsed as follows:

Robert Y. Conrad to Henry W. Castleman. Release. A copy. B'k R. D. No. 1, p. 148.

134 *Commissioner's Notice. Feb. 28th, 1888.*

In the District Court of the United States for the District of W. Va.

H. L. OPIE
vs.
S. W. WASHINGTON, Administrator of Henry W. Castleman; Mrs. D. Castleman, Widow of said Henry W. Castleman; H. B. Littlepage and Emily C., His Wife, Formerly Emily C. Castleman; Logan Osborne and Mary, His Wife, Formerly Mary Castleman; J. S. Powers and Estelle, His Wife, Formerly Estelle Castleman; John S. Castleman and Henry W. Castleman, Jr.; Nannie S. Opie, in Her Own Right and as Administratrix in the State of Virginia of Hirome L. Opie, Deceased; Thomas Opie, in His Own Right and as Administrator in the State of Virginia of Hirome L. Opie, Deceased; John N. Opie, and Mary Meade.

By virtue of a decree entered in the above-entitled cause on the 30th day of September, 1887, it is referred to the undersigned commissioner, who is directed to ascertain the amount due respectively to the complainant and to the said John N. Opie and to the said Mary Meade as established by said decree, and also to ascertain any other lien or liens, whether by judgment, deed of trust, or otherwise, binding upon the lands in the bill and proceedings mentioned, and make report of his action hereunder, stating also such matters as he may deem pertinent or either party may require him to state in order to a final decree.

135 Notice is hereby given that the undersigned has fixed upon Wednesday, the 28th of March, 1888, commencing at 9 o'clock a. m., as the time and his office, No. 1421 Chaplin street, in the city of Wheeling, Ohio county, West Virginia, as the place at which he will proceed to ascertain and report the several matters in the said decree required.

Given under my hand this 21st day of February, 1888.

ALFRED RHEINSTROM,
U. S. Commissioner.

Endorsed as follows:

Service of the within notice is duly accepted for all the defendants save the Opies & Mrs. Meade. Marshall McCormick, att'y. Feb'y 28th, '88. Service of the within notice accepted for plaintiff, H. L. Opie, & defendant- John N. Opie & Mary Meade by Robert White, their attorney. Feb'y 28th, '88.

136 H. L. OPIE
vs.
HENRY W. CASTLEMAN'S ADMINISTRATOR and Others. } In Chancery. Order Entered April 17th, 1888.

S. W. Washington, administrator of H. W. Castleman, deceased; Mrs. D. Castleman, widow of the said H. W. Castleman; H. B. Littlepage and Emily C., his wife; Logan Osborne and Mary, his wife;

J. S. Powers and Estelle, his wife; John S. Castleman and Henry W. Castleman, Jr., and William D. Smith, executor of E. J. Smith, deceased, defendants, desiring an appeal from the decree entered in this cause on the 19th day of April, 1888, to the Supreme Court of the United States, said appeal is allowed upon the defendants or some one for them entering into bond before the judge of this court in the sum of $3,000.00, conditioned that the said defendants shall duly prosecute their said appeal with effect and, moreover, pay the amount of costs and damages rendered and to be rendered in case the said decree shall be affirmed. So much of the decree entered in this cause on the 30th day of September, 1887, as granted an appeal to the decree then entered is hereby set aside, the same having been improperly allowed.

Endorsed as follows:
Entered O. B., fo. 408 & '9. H. L. Opie *vs.* H. W. Castleman's adm'r & others. 2 int. decree. April 17, 1888. Entered. Jackson, judge. April 19th, '88.

137 *Commissioner Rheinstrom's Report.*

Wm. D. Smith, ex'c'r of E. J. Smith, excepts to the report of U. S. Com'r Alfred Rheinstorm returned and filed April 17, 1888, in the cause of H. L. Opie *vs.* H. W. Castleman's adm'r *et al.*, because it gives priority over his debt audited in said report to the debt established as due the complainant and also Jno. N. Opie and Mrs. Mary Meade, because he says he is a purchaser for value without notice and that his equity is superior to that of the said complainant, Jno. N. Opie, & Mrs. Mary Meade.

MARSHALL McCORMICK,
Att'y for W. D. Smith, Ex'c'r.

April 19th, '88.

S. W. Washington, adm'r of H. W. Castleman, and the widow & heirs of said H. W. Castleman except to the report of U. S. Com'r Alfred Rheinstorm returned and filed April 17, 1888, in the cause of H. L. Opie *vs.* H. W. Castleman's adm'r *et al.*, because it reports as subsisting liens upon the real estate of said decedent debts in favor of the complainant and of Jno. N. Opie & Mrs. Mary Meade, the said exceptant insisting that no such debts or liens exist in fact.

R. J. BARTON,
MARSHALL McCORMICK,
Counsel for said Adm'r, Widow, Heirs.

April 19th, 1888.

Endorsed as follows:
H. L. Opie *vs.* H. W. Castleman's adm'r & others. Exceptions to the report of U. S. Com'r Alfred Rheinstrom returned and filed April 17th, 1888.

138 In the District Court of the United States for the District of West Virginia.

H. L. Opie
vs.
H. W. Castleman's Adm'r *et al.* } In Chancery.

To the Hon. J. J. Jackson, judge of said court:

The undersigned, commissioner, by virtue of a decree entered in the above-entitled cause on the 30th day of September, 1887, referring the same to him and directing him to ascertain the amounts due respectively to the complainant and to the said John N. Opie and to the said Mary Meade as established by said decree, and also to ascertain any other lien or liens, whether by judgment, deed of trust, or otherwise, binding upon the lands in the bill and proceedings mentioned, and to make report of his action hereunder, stating also such matters as he may deem pertinent or either party may require him to state in order to a final decree, would respectfully report as follows:

1st. He gave notice on the 21st day of February, 1888, that he had fixed upon Wednesday, the 28th day of March, 1888, commencing at 9 o'clock a. m., as the time and his office, No. 1421 Chapline street, in the city of Wheeling, Ohio county, West Virginia, as the place at which he would proceed to ascertain and report the several matters in the said decree required, as will appear from a copy of said notice hereto attached.

Your commissioner did not publish said notice for four successive weeks in some newspaper published in Jefferson county, in
139 the district and State of West Virginia, as directed by said decree, being directed by Col. Robert White, counsel for complainant, to not make such publication. Marshall McCormick, Esq., counsel for certain defendants, agreed to the same, as will appear from his letter to said White hereto attached. The said White and McCormick accepted service of said notice, as will appear by reference to their endorsements thereon.

2nd. He commenced his proceedings under the said decree on the said 28th day of March, 1888, commencing at 9 o'clock a. m., but not having completed his labors on said day he adjourned the same from time to time until the date hereof.

3rd. He finds and reports the amount due to the complainant, H. L. Opie, as directed by said decree, as follows: One-fourth of two-thirds of the amount of four bonds mentioned in the bill of proceedings, each for the sum of $3,622.27, dated January 1st, 1856, and due respectively January 1st, 1861, January 1st, 1862, January 1st, 1863, and January 1st, 1864, all bearing interest from January 1st, 1861, viz:

Four bonds, $3,622.27 each	$14,489 08
One-fourth of two-thirds of said $14,489.08	2,414 84
Int. on $2,414.84 from Jan. 1st, 1861, to Apr. 16, 1888	3,954 31
Amount due H. L. Opie April 16th, 1888	6,369 15

He finds the amount due the said John N. Opie on said four bonds, as directed by said decree	2,414 84
Int. from Jan. 1st, 1861, to Apr. 16th, 1888	3,954 31
Amount due John N. Opie April 16th, 1888	6,369 15
He finds the amount due the said Mary Meade on said four bonds, as directed by said decree	2,414 84
Int. from Jan. 1st, 1861, to Apr. 16, 1888	3,954 31
Amount due Mary Meade April 16, 1888	6,369 15

The said amounts due said H. L. Opie, John N. Opie, and Mary Meade, as above ascertained and reported, are of equal dignity and constitute the first lien upon the real estate in the bill and proceedings mentioned.

He also reports the following debts due by H. W. Castlemen, deceased, and which are liens upon the lands in the bill and proceedings mentioned:

First class (being the *secured* in priority).

W. D. Smith, executor of Edward L. Smith, deed of trust	$5,706 67

Second class (being the third in priority).

James L. Hooff	7 15
Weirick & Weller	22 93
P. H. Powers, trustee of Wickliffe church	34 11
T. W. Tomlinson	7 74
F. B. Sowders	7 32
John H. Strider	12 08
Wm. D. Smith	156 39
Peter MacJohnson	4 18
J. W. Walraven	84 15
W. H. Cameron	45 75
R. Shugart & Son	3 67
Abner, Osborn & Son	63 92
Bealle, Bros. & Phillips	28 47
Sadler & Bro.	9 55
Mrs. A. I. Tinsman	640 31
141 Dr. C. T. Richardson	11 27
Mary S. Naylor	12 57
F. G. Butler	19 93
Richard Roy	51 22
John H. Bishop	11 57
G. W. Levi	21 70
Miss Sallie Sinclair	60 67
Mahala Smith	15 85
H. J. Meyers	5 40
John D. Zombro	71 44

S. Howell Brown	7 15
Marshall McCormack (note)	335 65
M. Griffith	1 94
J. W. Taylor (fee bills)	5 50
James A. Foster	324 18
P. W. Clipp	36 44
John S. Castleman	822 95
John S. Castleman	74 59
Marshall McCormack	942 20
Barton & Boyd	822 22
John H. Stipe	4 02
John Myers	36 77
C. M. Castleman	663 50
C. M. Castleman	542 06
	$11,735 08

Third class (being fourth in priority).

James H. Vandernanter	1,170 33
	$12,905 41

142 All of the above debts, beginning with the debt of W. D. Smith, trustee, were ascertained from the report of Forrest W. Brown, commissioner, in a suit pending in the circuit court of Jefferson county, West Virginia, wherein H. W. Castleman's adm'r is plaintiff and Dewanna Castleman *et al.* are defendants, a copy of which is herewith filed; all of which is respectfully submitted.

ALFRED RHEINSTROM,
U. S. Commissioner.

Com'r fee, $18.00.

Endorsed as follows:

In the dist. ct. of the U. S., dist. of W. Va. H. L. Opie *vs.* H. W. Castleman's adm'r & others. Commissioner's report. Filed April 17th, 1888. Test: Jasper Y. Moore, cl'k D. C. U. S., D. W. Va.

143 *T. W. Latimer's Report. Filed with Report of Commissioner Rheinstrom's Report.*

In the Circuit Court of Jefferson County, W. Va., November Term.

Extract of decree of December 16th, 1885.

H. W. CASTLEMAN'S ADMINISTRATOR, Plaintiff, *ag't* DEWANNA CASTLEMAN *et al.*, Defendants. } In Chancery.

On consideration whereof the court doth adjudge, order, and decree that this cause be referred to F. W. Brown, a commissioner in chancery of this court, with instruction to ascertain and report

the real estate of which H. W. Castleman died seized, its value and annual rental value; also the debts due by said decedent, auditing them according to their priorities with reference to said real estate, and such further matters as may be deemed pertinent by him required by the parties.

A true extract.

Teste: T. W. LATIMER, *Clerk.*

144 *Report of F. W. Brown, Commissioner.*

S. W. WASHINGTON, Administrator of Henry W. Castleman, Deceased, *ag't* DEWANNA CASTLEMAN *et al.* } In Chancery.

To the Honorable Frank Beckwith, judge of the circuit court of Jefferson county:

In pursuance of the annexed decree, entered in the above-entitled cause December 16th, 1885, your commissioner gave notice to all parties concerned, as required therein, by publishing the same in the West Virginia Democrat, a newspaper published in Jefferson county, W. Va., for four successive weeks, and by posting the same, as required by law, that he would proceed to execute said decree, at his office, in Charlestown, Jefferson county, West Va., on the 4th day of February, 1886. He also published in the same newspaper and posted, as required by the decree and in accordance with the statute, the lienholders' notice. The notice to creditors was also given by publication and posting, as required by statute; a copy of all of which notices, those published and posted according to law, are herewith returned as part of this report. In pursuance of said notices your commissioner proceeded to execute said

145 decree on the 4th of February, 1886, and, not having completed the same, adjourned to February 5th, then to February 6th, and afterwards to the 1st day of April, 1886; thence to April 8th, and thence from day to day until the 16th day of July, 1887, when this report was completed. Henry W. Castleman died seized of the following real estate: A tract of land known as his home farm, near Myerstown, in Jefferson county, improved by fine dwelling, stables, outhouses, and grist-mill, containing 396 acres 1 rood 26 perches, valued $55.00 per acre; total value, $21,802.69; annu-l rental value, $1,000.

Also a mountain tract, east of Shenandoah river, unimproved, containing 419 acres; value, $2.50 per acre; total value, $1,047.50; annual rental value, —.

Liens upon the Real Estate of Henry W. Castleman, with Their Priorities.

Class 1st.

W. D. Smith, executor of Edward L. Smith: A deed of trust executed by Henry W. Castleman and wife to N. S. White, trustee, bear-

ing date March 22nd, 1878, and duly recorded in the clerk's office of the county court of Jefferson county, in Deed Book, page 146 —, conveying that portion of the home farm lying south of the county road running from Castleman's mill to Lock's ferry, on Shenandoah river, containing between 200 and 250 acres; further described in deed exhibited with complainant's bill, marked Exhibit C, to secure W. D. Smith, executor of Edward I. Smith, a bond for $5,000.00. Interest on this bond is paid to March 22nd, 1885.

Interest from March 22nd to May 18th, 1886, 346.67; amount due May 18th, 1886, $5,346.67; interest on $5,000.00 from May 18th, 1886, to August 1st, 1887, 360.00; total amount due August 1st, 1887, $5,706.67.

Class 2nd.

General debts of H. W. Castleman, deceased:

James Law Hooff, note dated Sept. 7th, 1885, one day after date, for		$23 62
Interest to November 4th, 1881		8 74
		32 36
Cr. Nov. 4th, 1881, by am't from Charles Goings		27 26
Balance " " "		$5 10
Interest from November 4th, 1881, to May 18th, 1886		1 69
Total due May 18th, 1886		6 79
Interest on $5.10 from May 18th, 1886, to August 1st, 1887		36
Total amount due August 1st, 1887		7 15

147 Werrick & Weller.

Flour account March 25th, 1885		$10 00
Interest from March 25th, 1885, to May 18, 1886		69
Shop account, balance due May 2nd, 1884		9 65
Interest from May 2nd, 1884, to May —, 1886		1 18
Total amount due May 18th, 1886		$21 52
Interest on $19.65 from May 18th, 1886, to August 1st, 1887		1 41
Total amount due August 1st, 1887		22 93

P. H. Powers, trustee & treasurer of Wickliff church.

Subscription to salary of rector of Wickliff church, due April 15th, 1885		$30 00
Interest from April 15th, 1885, to May 18th, 1886		1 95
Total amount due May 18th, 1886		31 95

Interest on $30.00 from May 18th, 1886, to Aug. 1st, 1887	2 16
Total amount due August 1st, 1887	34 11

T. W. Tomlinson.

Open account September 9th, 1884	$6 60
Interest from Sept. 19th, 1884, to May 18th, 1886	66
Total amount due May 18th, 1886	$7 26
Interest on $6.60 from May 18th, 1886, to Aug. 1st, 1887	48
Total amount due August 1st, 1887	7 74

148 F. B. Souders.

Open account June 10th, 1885	$6 50
Interest from June 10th, 1885, to May 16th, 1886	36
Total amount due May 18th, 1886	$6 86
Interest on $6.50 from May 18th, 1886, to August 1st, 1887	46
Total amount due August 1st, 1887	$7 32

John H. Strider, agent.

Store account February 12th, 1883	$9 54
Interest from February 12th, 1883, to May 18th, 1887	1 86
Total amount due May 18th, 1886	11 40
Interest on $9.54 from May 18th, 1886, to August 1st, 1887	68
Total amount due August 1st, 1887	$12 08

W. D. Smith.

Bond dated March 22nd, 1878, at 12 months	$175 00
Credit April 5th, 1879	51 00
Interest paid to March 22nd, 1883.	
Balance March 22nd, 1883	$124 00
Interest from March 22nd, 1883, to May 18th, 1886	23 47
Total amount due May 18th, 1886	147 47
Interest on $124.00 from May 18th, 1886, to Aug. 1st, 1887	8 92
Total amount due August 1st, 1887	$156 39

149 Peter MacJohnson.

Open account due Nov. 4th, 1884	$3 60
Interest from Nov. 4th, 1884, to May 18th, 1886	33
Total amount due May 18th, 1886	3 93
Interest on $3.60 from May 18th, 1886, to August 1st, 1887	25
Total amount —— 1st, 1887	4 18

J. W. Walraven.

Bond dated April 5th, 1884, on demand	$70 10
Interest from April 5th, 1884, to May 18th, 1886	8 91
Total amount due May 18th, 1886	79 01
Interest on $70.10 from May 18th, 1886, to Aug. 1st, 1887	5 04
Total amount due August 1st, 1887	$84 05

W. H. Cameron.

Open account, balance due June 12th, 1885	$40 56
Interest from June 12th, 1885, to May 18th, 1886	2 27
Total amount due May 18th, 1886	42 83
Interest on $40.56 from May 18th, 1886, to August 1st, 1887	2 92
Total amount due August 1st, 1887	45 75

R. Shugert & Sons.

Open account, balance due October 25th, 1883	$3 00
Interest from Oct. 25th, 1883, to May 18th, 1886	46
Total amount due May 18th, 1886	3 46
Interest on $3.00 from May 18th, 1886, to Aug. 1st, 1887	21
Total amount due August 1st, 1887	3 67

Abner, Osburn & Son.

Medical account due June 13th, 1885	$56 68
Interest from June 13th, 1885, to May 18th, 1886	3 16
Total amount due May 18th, 1886	59 84
Interest on $56.68 from May 18th, 1886, to August 1st, 1887	4 08
Total amount due August 1st, 1887	$63 92

Beal Bros. & Phillips.

Open account due August 7th, 1885	$25 46
Interest from August 7th, 1885, to May 18th, 1886	1 18
Amount due May 18th, 1886	26 64
Interest on $25.46 from May 18th, 1886, to August 1st, 1887	1 83
Total amount due August 1st, 1887	$28 47

Sadler & Bro.

Open account due May 17th, 1884	$8 45
Interest from May 17th, 1886	50
Total amount due May 18th, 1886	$8 95

Interest on 8.45 from May 18th, 1886, to August 1st, 1887	60
Total amount due August 1st, 1887	9 55

151 Mrs. A. J. Tinsman.

Bond dated February 2nd, 1885, for	$566 06
Interest to April 21st, 1885	7 36
Amount due April 21st, 1885	573 42
Credit by *by* payment April 21st, 1885	10 00
Balance due April 21	563 42
Interest from April 21st, 1885, to May 18th, 1886	36 33
Total amount due May 18th, 1886	599 75
Interest on $563.42 from May 18th, 1886, to Aug. 1st, 1887	40 56
Total amount due August 1st, 1887	640 31

Dr. C. T. Richardson.

Medical account due June 16th, 1885	$10 00
Interest from June 16th, 1885, to May 18th, 1886	55
Total amount due May 18th, 1886	10 55
Interest from May 18th, 1886, to August 1st, 1887	72
Total amount due August 1st, 1887	$11 27

Mary S. Taylor.

Open account due July 25th, 1884	$10 65
Interest from July 25th, 1884, to May 18th, 1886	1 16
Total amount due May 1st, 1886	11 81
Interest on $10.65 from May 18th, 1886, to August 1st, 1887	76
Total amount due August 1st, 1887	$12 57

152 F. G. Butler.

Open account due March 13th, 1885	$17 45
Interest from March 13th, 1885, to May 18th, 1886	1 23
Total amount due May 18th, 1886	18 68
Interest on $17.45 from May 18th, 1886, to August 1st, 1887	1 25
Total amount due August 1st, 1887	$19 93

Richard Roy.

Contract August 25th, 1884		$138 62
Credit	$61 41	
From S. W. Washington, adm'r	31 30	
		92 71
Balance due		$45 91
Interest from August 25th, 1885, to May 18th, 1886		2 01
Total amount due May 18th, 1886		$47 92
Interest on $45.91 from May 18th, 1886, to August 1st, 1887		3 30
Total amount due August 1st, 1887		$51 22

John H. Bishop.

Open account, balance due Oct. 4th, 1884	$9 90
Interest from Oct. 4th, 1884, to May 18th, 1886	96
Total amount due May 18th, 1886	10 86
Interest on 9.90 from May 18th, 1886	71
Total amount due August 1st, 1887	$11 57

153 G. Levi.

Open account	$20 00
Interest from March 1st, 1886, to May 18th, 1886	26
Total amount due May 18th, 1886	$20 26
Interest on $20.00 from May 18th, 1886, to August 1st, 1887	1 44
Total amount due August 1st, 1887	$21 70

Miss Sallie Sinclair.

Open account for balance on steer sold	$50 00
Interest from January 9th, 1884, to May 18th, 1886	7 07
Total amount due May 18th, 1886	$57 07
Interest on $50.00 from May 18th, 1886, to August 1st, 1887	3 60
Total amount due August 1st, 1887	$60 67

Mahala Smith.

Open account July 1st, 1885	$14 10
Interest from July 1st, 1885, to May 18th, 1886	74
Total amount due May 18th, 1886	$14 84

Interest from May 18th, 1886, to August 1st, 1887	1 01
Total amount due August 1st, 1887	$15 85

H. J. Myers.

Open account March 25th, 1885	$4 75
Interest from March 25th, 1885, to May 18th, 1886	32
Total amount due May 18th, 1886	$5 07
154 Interest on $4.75 from May 18th, 1886, to August 1st 1887	33
Total amount due August 1st, 1887	$5 40

John D. Zombro.

Open account February 18th, 1884	$59 20
Interest from February 15th, 1884, to May 1st, 1886	7 99
Total amount due May 18th, 1886	$67 19
Interest on $59.20 from May 18th, 1886, to August 1st, 1887	4 25
Total amount due August 1st, 1887	$71 44

S. Howell Brown.

Open account 1883	$6 00
Interest 2 years to May 18th, 1886	72
Total amount due May 18th, 1886	$6 72
Interest from May 18th, 1886, to August 1st, 1887	43
Total amount due August 1st, 1887	$7 15

Marshall McCormick.

Nogotiable note dated April 7th, 1885, at 120 days for $300.00 assigned by Bank of Clarke Co. to M. McCormick	$300 00
Interest from August 7th, 1885, to May 18th, 1886	14 05
Total amount due May 18th, 1886	$314 05
On $300.00 from May 18th, 1885, to Aug. 18th, 1886	21 60
Total amount due Aug. 1st, 1887	$335 65

155 M. Griffith.

Open account due September 4th, 1884	$1 65
Interest from September 4th, 1884, to May 18th, 1886	17
Total amount due May 18th, 1886	$1 82

Interest on $1.65 from May 18th, 1886, to Aug. 1st, 1887	12
Total amount due August 1st, 1887	$1 94
J. W. Taylor (sheriff of King William Co., Va.), fee bills	5 50

James A. Foster.

Bond on demand, dated April 16th, 1884	$271 89
Interest from 16th of April, 1884, to May 18th, 1886	32 72
Total amount due May 18th, 1886	$304 61
Interest on $271.89 from May 18th, 1886, to Aug. 1st, 1887	19 57
Total amount due August 1st, 1887	$324 18

P. W. Clipp.

Open account for feeding cattle	$30 00
Interest from January 1st, 1884, to May 18th, 1886	4 28
Total amount due May 18th, 1886	34 28
Interest on $30.00 from May 18th, 1886, to Aug. 1st, 1887	2 16
Total amount due August 1st, 1887	$36 44

John S. Castleman.

Open account due May 18th, 1886	770 73
Interest on 725.33 from May 18th, 1886, to August 1st, 1887	52 22
Total am't due August 1st, 1887	$822 95

156 John S. Castleman.

Amount due firm of H. W. Castleman and John S. Castleman, $143.08, one-half thereof due from H. W. Castleman to John S. Castleman, survivor, May 18th, 1886	$71 54
Interest on 42.50 from May 18th, 1886, to August 1st, 1887	3 05
Total amount due August 1st, 1887	$74 59

Marshall McCormick.

Account professional services as compromised	$942 20

Barton & Boyd.

Account professional services as compromised	$822 22

John H. Stipe.

Open account January 31st, 1885	$3 50
Interest from January 31st, 1885, to August 1st, 1887	52
Total amount due August 1st, 1887	$4 02

John Myers.

Open account January 1st, 1885	$31 84
Interest from January 1st, 1885, to August 1st, 1887	4 93
Amount due August 1st, 1887	$36 77

Paid by C. M. Castleman, as surety, and audited for his use, W. V. Green, trustee of Eloisa M. Green, four bonds of H. W. Castleman and C. M. Castleman, each bearing date October 10th, 1872, payable in one, two, three, and four years respectively, with
157 interest from date, payable annually, for $141.98 each, interest paid to October 10th, 1884.

Amount of bonds	$567 92
Interest from October 10th, 1884, to May 18th, 1886	54 70
Total amount due May 18th, 1886	622 62
Interest on 567.92 from May 18th, 1886, to August 1st, 1887	40 88
Total amount due August 1st, 1887	$663 50

Paid by C. M. Castleman, surety, and audited for his own use, executor of Eloisa M. Green, four bonds of H. W. Castleman, dated October 10th, 1872, each for $115.99½, payable to Eloisa M. Green in 1, 2, 3, & 4 years, with interest from date, respectively, interest paid to October 10th, 1884.

Amount of bonds	$463 98
Interest from October 10th, 1884, to May 18th, 1886	44 68
Total amount due May 18th, 1886	508 66
Interest on 463.98 from May 18th, 1886, to August 1st, 1887	33 40
Total amount due August 1st, 1887	$542 06

James H. Vandervanter has presented a bond of H. W. Castleman for $1,000.00, payable on demand and dated September 28th, 1870, interest paid to September 28th, 1884; to which the adm'r of H. W. Castleman pleads the statute of limitation. Your commissioner finds it bar-ed of statute limitation, but inasmuch
158 as Mr. Vandervanter has presented a waiver signed by the heirs and distributees of H. W. Castleman, a copy of which is returned with this report, he has audited it, but to be paid, after the other debts are discharged, out of any funds remaining that would be distributed to such heirs and distributees.

Amount of bond	$1,000 00
Interest from Sept. 28th, 1884, to May 18th, 1886	98 33
Total amount due May 18th, 1886	1,098 33

Interest on 1,000.00 from May 18th, 1886, to Aug. 1st, 1887	72 00
Total amount due Aug. 1st, 1887	$1,170 33

Recapitulation.

W. D. Smith, executor of Edward I. Smith, deed of trust, with interest to Aug. 1st, 1887	$5,706 67
James L. Hooff, note and interest to Aug. 1st, 1887	7 15
Weirick & Weller, open ac't, " " "	22 93
P. H. Powers, trustee of Wickliffe church, " "	34 11
T. W. Tomlinson, open ac't, interest to " "	7 74
F. B. Sowders, " " " "	7 32
John H. Strider, " " " "	12 08
W. D. Smith, note, " " "	156 39
Peter MacJohnson, open account, " " "	4 18
J. W. Walraven, note, " " "	84 05
W. H. Cameron, open account,	45 75
R. Shugart & Son,	3 67
Aner, Orsburn & Son,	63 92
159	
Bealle, Bro. & Phillips, " " " "	28 47
Sadler & Bro., " " " "	9 55
Mrs. A. I. Tinsman, note " " "	640 31
Dr. C. T. Richardson, open ac't " "	11 27
Mary S. Taylor, " " " "	12 57
F. G. Butler, " " " "	19 93
Richard Roy, " " " "	51 22
John H. Bishop, " " " "	11 57
G. W. Levi, " " " "	21 70
Mrs. Sallie Sinclair, " " " "	60 67
Mahala Smith, " " " "	15 85
H. J. Myers, " " " "	5 40
John D. Zombro, " " " "	71 44
S. Howell Brown, " " " "	7 15
Marshall McCormick, note " "	335 65
M. Griffith, open ac't " "	1 94
J. W. Taylor, sheriff King William Co., Va., fee bills	5 50
James A. Foster, note interest to August 1st, 1887	324 18
P. W. Clipp, open ac't " "	36 44
John S. Castleman, " "	822 95
John S. Castleman, " "	74 59
Marshall McCormick, " "	942 20
Barton & Boyd, " "	822 22
John H. Stipe, " "	4 02
John Myers, " "	36 77
C. M. Castleman, surety on notes paid by him to W. V. Green, trustee of Eloisa M. Green	663 50

160 C. M. Castleman, surety on notes paid by him to W. V. Green, ex'or of Eloisa M. Green 542 06

$11,735 08

James Vandervanter, note 1,170 33

Total principle and interest to August 1st, 1887.. 12,905 41

Respectfully submitted.

FORREST W. BROWN,
Commissioner.

IN THE CLERK'S OFFICE OF THE
CIRCUIT COURT OF SAID COUNTY.

I, T. W. Latimer, clerk of said court, do hereby certify the foregoing to be a true copy of so much of the report of F. W. Brown, commissioner, as I have been directed by attorney to make.

Teste:

T. W. LATIMER, *Clerk.*

The above copy contains all debts audited in above suit.

Teste:

T. W. LATIMER, *Clerk.*

161 H. L. OPIE
vs.
HENRY W. CASTLEMAN'S ADM'R, WIDOW, HEIRS, and Others.
In Chancery.
Decree of April 19th, 1888.

This cause came on to be heard this 19th day of April, 1888, *from* the papers formerly read and the report of Alfred Rheinstrom, a commissioner of this court, to whom the cause was referred by a decree heretofore entered in the cause on the 30th day of September, 1887, and upon the exceptions to said report filed by Wm. D. Smith, ex'c'r of E. J. Smith, and by the adm'r, widow, and heirs of H. W. Castleman, dec'd, and upon which report and the exceptions thereto the cause is heard by consent of the parties in interest thereto, which consent is given in open court by Robert White, Marshall McCormick, and R. T. Barton, claiming to represent all the parties in interest to this cause, the want of notice and the publication as to the making up of said report being expressly *eraised.* Upon consideration whereof the court doth overrule both of said exceptions to said report and doth confirm the same and doth ascertain the liens upon and debts binding the real estate in the bill and proceedings mentioned, together with their priorities, to be as follows, to wit:

162 1st. And with priority over all other debts, but with equal dignity as between themselves, the following, as fixed by the said decree rendered in this cause and dated on the 30th day of September as aforesaid: A debt to the plaintiff amounting, on the 16th day of April, 1888, according to the said report of said Commissioner Rheinstorm, to the sum of $6,369.15; a debt to the de-

fendant Mary Meade amounting, on the said 16th day of April, 1888, to the like sum of $6,369.15; a debt to the defendant John N. Opie amounting, on the 16th day of April, 1888, to a like sum of $6,369.15, all of which are to bear interest from the said 16th day of April, 1888, until paid, and constitute the primary lien upon the said real estate conveyed by the deed of trust in the bill mentioned, a copy of which was exhibited with the bill from the said Henry W. Castleman and wife to Robert Y. Conrad, trustee, and which amounts are fixed in accordance with the opinion and decree of this court entered in this cause as aforesaid.

2nd. A lien in favor of W. D. Smith, executor of Edward I. Smith, upon that portion of the said land in the bill mentioned, a part of the home farm lying south of the county road running from Castleman's mill to Lock's ferry, on Shenandoah river, containing between 200 and 250 acres, which lien exists by reason of a deed of trust in the said report referred to, and which amounted, on the 1st day of August, 1887, to the sum of $5,706.67, and which is a lien second in priority upon the last-named portion of the said home farm.

3rd. The following general debts, binding the whole of the
163 said land, but with priority subsequent to the debts as ascertained as aforesaid as secured upon the whole land by the said deed of trust to Robert Y. Conrad, trustee, and subsequent to the debt aforesaid to the said W. D. Smith, executor of Edward I. Smith, upon that portion of the said land as is embraced in the said deed of trust given to secure the said debt, and second in priority with so much of the said Smith debt as may not be realized from the real estate embraced in the said deed of trust given specially to secure it, viz:

James L. Hoff, $7.15, with interest from the 1st of August, 1887.

Weirick & Miller, $22.85, with interest from the 1st of August, 1887.

P. H. Powers, trustee, $34.11, with interest from the 1st of August, 1887.

T. W. Tomlinson, $7.74, with interest from the 1st of August, 1887.

F. B. Sowders, $7.32, with interest from the 1st day of August, 1887.

John H. Strider, $12.08, with interest from Aug. 1st, 1887.

Wm. D. Smith, $156.39, with interest from the 1st Aug., 1887.

Peter MacJohnson, $4.18, with interest from Aug. 1st, 1887.

J. W. Walraven, $84.05, with interest from the 1st day of August, 1887.

W. H. Cameron, $45.75, with interest from Aug. 1st, 1887.

R. Shugart & Son, $3.67, with interest from the 1st day of August, 1887.

Abner Osburn & Son, $63.92, with interest from Aug. 1st, 1887.

Baelle Bro. & Phillips, $28.47, with interest from August 1st, 1887.

Sadler & Bro., $9.55, with interest from the 1st Aug., 1887.

Mrs. A. I. Tinsman, $640.31, with interest from 1st August, 1887.

Dr. C. T. Richardson, $11.27, with interest from Aug. 1, 1887.
Mary S. Taylor, $12.57, with interest from August 1st, 1887.
F. G. Butler, $19.93, with interest from Aug. 1st, 1887.
164 Richard Roy, $51.22, with interest from Aug. 1st, 1887.
John H. Bishop, $11.57, with interest from Aug. 1st, 1887.
G. W. Levi, $21.70, with interest from Aug. 1st, 1887.
Sallie Sinclair, $60.67, with interest from Aug. 1st, 1887.
Mahala Smith, $15.85, with interest from Aug. 1st, 1887.
H. J. Myers, $5.40, with interest from Aug. 1st, 1887.
John D. Zombro, $71.44, with interest from Aug. 1st, 1887.
S. Howell Brown, $7.15, with interest from Aug. 1st, 1887.
Marshall McCormick, $335.69, with interest from the 1st August, 1887.
M. Griffith, $1.94, with interest from the 1st Aug., 1887.
J. W. Taylor, $5.50.
James A. Foster, $324.18, with interest from Aug. 1st, 1887.
P. W. Clipp, $36.44, with interest from the 1st Aug., 1887.
John S. Castleman, $822.95, with interest from the 1st August, 1887.
John S. Castleman, $74.59, with interest from Aug. 1st, 1887.
Marshall McCormick, $942.20, with interest from August 1st, 1887.
Barton & Boyd, $822.22, with interest from Aug. 1st, 1887.
John H. Stipe, $4.02, with interest from Aug. 1st, 1887.
John Myers, $36.77, with interest from Aug. 1st, 1887.
John H. Castleman, $663.50, with interest from August 1st, 1887.
J. M. Castleman, $542.06, with interest from Aug. 1st, 1887.
4th. The following debt, which is last in point of priority, to wit:
James H. Vandervanter, $1,170.33, with interest from August 1st, 1887.

And the court doth further adjudge, order, and decree that unless the said debts, with the interest thereon, and the costs of this suit shall be paid within thirty days from the rising of this court
165 at the present term, then Robert White, R. Y. Barton, & Marshall McCormick, who are hereby appointed special commissioners for the purpose, any one or more of whom may act, shall sell at public auction, before the court-house door, in the town of Charlestown, in the county of Jefferson, in the district and State of West Virginia, the real estate conveyed by the said deed of trust from the said Henry W. Castleman and wife to Robert Y. Conrad, trustee, dated the first day of January, 1856, and admitted to record in the clerk's office of the county court of the said county of Jefferson on the second day of January, 1856, it being the deed of trust exhibited with the plaintiff's bill, which real estate consists of two tracts of land, as set forth in said deed of trust, to wit, one tract lying on the west side of the Shenandoah river, in the county of Jefferson, formerly occupied by H. L. Opie, including the mill property, and containing, as stated in the said deed, by "Brown's recent survey, 596 acres," it being the home farm of the said Henry W. Castleman, in the said county of Jefferson, the other tract lying on

the east side of the said riv.. and containing four hundred and nineteen acres, more or less.

Said sale shall be made upon the following terms, to wit: One-fourth thereof in cash and the residue in one, two, and three years from date of sale, with interest from said day of sale, the purchaser to execute notes for the deferred payments & a lien to be retained upon the property sold as a security for said deferred payments. The said sale shall be advertised for at least once a week for four successive weeks in some newspaper printed in the said county
166 of Jefferson, and also by handbills, as the said commissioners may think best; but before the said commissioners shall receive any money under this decree they shall give bond before the clerk of this court in the penal sum of $10,000.00, conditioned according to law.

And the defendants desiring an appeal from this decree to the Supreme Court of the United States, said appeal is allowed upon the defendants or some one for them entering into bond before the judge of this court in the sum of three thousand dollars, conditioned that the said defendants shall duly prosecute their said appeal with effect and, moreover, pay the amount of costs and damages rendered and to be rendered in case the said decree shall be affirmed.

(Signed) JACKSON, *Judge.*

Sept. 30, 1887.

Endorsed as follows:

Entered O. B., fo. 404 to 408. Opie — Castleman, &c. Int. decree of sale, April 19th, 1888. Enter. Jackson, judge. April 18th, 1888.

167

H. L. OPIE *vs.* HENRY W. CASTLEMAN'S ADMINISTRATOR, WIDOW, and Others.	In Chancery. Decree of April 20th, 1888.

In this cause the commissioners of sale appointed in this cause at the present term of the court may, notwithstanding the appeal allowed in the cause, execute the decree of sale upon filing in the papers of the cause the written consent thereto signed by the widow and heirs-at-law of the said Henry W. Castleman, deceased.

On the motion of Marshall McCormick, counsel for the defendant-, leave is given him to withdraw from the files of this cause the appeal bond executed under the decree of Sept. 30th, 1887.

Endorsed as follows:

Entered O. B., fo. 410. H. L. Opie *vs.* H. W. Castleman's adm'r & others. Int. decree, April 20th, 1888. Enter. Jackson, judge. April 20, '88.

168 *Appeal Bond.*

Know all men by these presents that we, Dewanna Castleman, Emilie C. Littlepage, John S. Castleman, J. S. Powers, A. H. Witherspoon, Wm. D. Smith, Marshall McCormick, and R. J. Barton, are held and firmly bound unto H. L. Opie, John N. Opie, and Mary

Meade in the just and full sum of three thousand ($3,000) dollars, to be paid to the said H. L. Opie, John N. Opie, and Mary Meade, their administrators or assigns; to which payment, well and truly to be made, we bind ourselves, our heirs, executors, and administrators, jointly and severally, by these presents.

Sealed with our seals and dated this 19th day of April, 1888.

Whereas at a term of the district court of the United States for the district of West Virginia held at Wheeling, West Virginia, in a suit therein depending between H. L. Opie and the administrators and widow and heirs of Henry W. Castleman, dec'd, and others, a decree was this the 19th day of April, 1888, rendered against the heirs and adm'r of H. W. Castleman, dec'd;

And whereas the said decree provides that the defendants desireing an appeal from this decree to the Supreme Court of the United States, said appeal is allowed upon the defendants or some one for them entering into bond before the judge of this court in the sum of three thousand dollars, conditioned that they, the said defendant-, shall duly prosecute the said appeal with effect and, moreover, pay the amount of costs and damages rendered and to be rendered in case said decree shall be affirmed: Now, the condition of the above obligation is such that if the said heirs and administrators of H. W.
169 Castleman shall prosecute their appeal with effect and answer all damages and costs if the said heirs and administrators of H. W. Castleman fail to make their appeal good, then the above obligation to be void; else to remain in full force and virture.

DEWANNA CASTLEMAN.	[SEAL.]
EMILIE C. LITTLEPAGE.	[SEAL.]
JOHN S. CASTLEMAN.	[SEAL.]
J. S. POWERS.	[SEAL.]
A. H. WITHERSPOON.	[SEAL.]
WM. D. SMITH.	[SEAL.]
MARSHALL McCORMICK.	[SEAL.]
R. Y. BARTON.	[SEAL.]

Sealed and delivered in the presence of—

——— ———.

Bond approved.

J. J. JACKSON,
Judge D. C. U. S., D. W. Va.

June 8th, 1888.

UNITED STATES OF AMERICA, *District of West Virginia*, } ss:

This day personally appeared before me, Jasper Y. Moore, clerk of the district court of the United States for the district of West Virginia, Marshall McCormick and R. Y. Barton, who, being by me duly sworn, depose and say that they each are worth the sum of three thousand dollars after the payment of all their debts, those for which they are personally liable and those for which
170 they are liable as surety, and they each acknowledged the foregoing bond in my presence.

Given under my hand this 19th day of April, A D. 1888.

JASPER Y. MOORE,
Clerk D. C. U. S., D. W. Va.

UNITED STATES OF AMERICA, } *ss:*
District of West Virginia, }

This day personally appeared before me, D. C. Westenhaver, a commissioner of the U. S. circuit court for the district of West Virginia, Dawanna Castleman, Emilie C. Littlepage, John S. Castleman, J. S. Powers, A. H. Witherspoon, Wm. D. Smith, who, being by me duly sworn, depose and say that they each are worth the sum of three thousand dollars after the payment of all their debts, those for which they are personally liable and those for which they are liable as surety, and they each acknowledge the foregoing bond in my presence.

Given under my hand this 28th day of May, 1888.

D. C. WESTENHAVER,
U. S. Commissioner.

Endorsed as follows:

U. S. court. Henry L. Opie *vs.* Castlemans & others. Appeal bond. Filed June 8th, 1888. Test: Jasper Y. Moore, clerk D. C. U. S., D. W. Va. Bond. Opie.

171 UNITED STATES OF AMERICA, } *ss:*
District of West Virginia, }

I, Jasper Y. Moore, clerk of the district court of the United States for the district of West Virginia, do hereby certify that the foregoing is a true transcript of the record and proceedings in a certain suit in chancery lately pending in said district court between H. L. Opie, complainant, and Henry W. Castleman's executor and others, defendants, with all things touching the same, as fully and wholly as they now exist among the records of my office.

Seal District Court United States, District West Virginia, Wheeling, W. Va.

In testimony whereof I hereunto set my hand and the seal of our said court this 10th day of September, 1888, and in the 113th year of the Independence of the United States of America.

JASPER Y. MOORE,
Clerk D. C. U. S., D. W. Va.

Endorsed on cover: Case No. 13,411. West Virginia D. C. U. S. No. 282. S. W. Washington, administrator of Henry W. Castleman, deceased; Dewanna Castleman, widow of said Henry W. Castleman; H. B. Littlepage & Emily C., his wife; Logan Osborne & Mary, his wife; J. S. Powers & Estelle, his wife; John S. Castleman, Henry W. Castleman, and Wm. D. Smith, executor of E. J. Smith, dec'd, appellants, *vs.* H. L. Opie. Filed October 24, 1888.

It is hereby stipulated between Marshall McCormick, counsel for the appellants, and Robert White, counsel for the appellees, in the case of Washington, adm'r of Castleman, against Opie, No. 282 of the Oct. term, 1891, pending in the United States Supreme Court, that the opinion of the Hon. John J. Jackson, judge of the district court of the United States for West Virginia, delivered in the said case, may now be printed and made a part of the record of the said case in the United States Supreme Court just as if the same had been originally sent up to the said Supreme Court with the transcript of the record, the said opinion having been inadvertantly omitted to be copied by the clerk of the said district court and sent up with the transcript of the record.

ROBERT WHITE,
Counsel for H. S. Opie, John Opie, and Mrs. Mead, Appellees.
MARSHALL McCORMICK,
Counsel for All Other Parties.

District Court, Dist. West Va.

OPIE
vs.
CASTLEMAN. } In Equity.

Rob't White, for complainant; Marshall McCormick and R. T. Burton, for defendant.

JACKSON, *J.*:

In 1856 Hiram L. Opie, the ancestor of the plaintiff, sold to Henry W. Castleman, now deceased, a tract of land in Jefferson county, then in the State of Virginia, now West Virginia, for the sum of $41,733.66; $10,000 cash in hand and the balance in deferred installments, evidenced by notes bearing date January 1, 1856—the first, for $5,000, due January 1, 1857; the second, for $5,000, payable January 1, 1858; and six other notes for $3,622.27½, payable respectively January 1, 1859, 1860, 1861, 1862, 1863, 1864, all bearing interest from date. Shortly after the sale of his land he moved to Augusta county, Virginia, then and ever since a county in the State of Virginia, where he resided until his death, in 1862. At the time of the sale a deed conveying the property was made by the vendor to the purchaser, and a deed of trust was executed by the purchaser upon the land conveyed to secure the payment of the unpaid purchase-money. When the grantor died there remained unpaid of the purchase-money four bonds, each for the sum of $3,622.27, due and payable the first day of January, 1861, 1862, 1863, and 1864, respectively, it being conceded that the interest was paid up to January, 1861.

In 1861 certain States, afterwards known as the Confederate States, seceded from the Union, whereby war ensued between the United States and the so-called Confederate States, and during the war the

county of Jefferson was for the most of the time in the military possession of the United States, while the county of Augusta during the same period was mostly in the military possession of the so-called Confederate States. In 1863 the State of West Virginia was created, whereby Jefferson county became a part of that State. In November, 1862, the widow of the deceased and Thomas L. Opie qualified as personal representatives of the estate of the decedent. Late in the year 1862 Castleman, knowing there was due on the purchase-money of the bond which had matured January 1, 1861, and on the bond to fall due in January, 1862, something over $8,000, with unpaid interest, got together notes of the Confederate States and Virginia bank notes sufficient to pay off the notes payable January, 1861 and 1862, and crossed the military lines into the Confederate States and found Mrs. Opie, one of the personal representatives, and paid off and discharged the notes of 1861 and 1862 with Confederate money, which at the time was greatly depreciated. Subsequently Castleman paid and discharged the notes that fell due in January, 1863 and 1864, in the same kind of depreciated currency. At the time the payments were made Mary and John, heirs of the decedent, were under age and the plaintiff in this action was absent from home and has not ratified the action of the personal representatives of the estate. In 1865 a release was executed by the trustee in the deed of trust upon the request of Mrs. Opie, administratrix of the estate. The estate of the decedent was not in debt, and the greater part of the money which came into the hands of the personal representatives was invested in bonds of the Confederate States.

These are substantially the facts of the case; and the question that presents itself for the consideration of the court is, Were the payments made on a contract entered into before the war and which at the time was to be discharged by the lawful money of the United States, satisfied and extinguished by the payments made to the fiduciaries in depreciated currency? It is to be borne in mind that the relation of a fiduciary to the estate he represents is very different from that of the decedent, if living. The latter could exercise unlimited discretion to do as he saw proper in accepting as payment of a debt due him any currency passing for money, however depreciated, while the former, acting in a fiduciary capacity, would be required to exercise the soundest discretion. A personal representative must act in good faith with the estate he has in charge. It is his duty to look after the estate, preserve it from waste, and protect it from unnecessary expenditure.

In the case before us there is no charge of neglect of property or the usual charge of waste connected with its administration. The heirs in this instance, who are asserting their rights in this action, did not ask for a distribution of its assets, two of them being minors and the other absent from home most of the time. It does not appear that they assented or acquiesced in the action of the personal representatives. Moreover, the debtor was not pressed or required to pay the money. On the contrary, he seemed to have put himself to unusual trouble to secure the funds with which to pay the debts due the estate in a depreciated currency, the greater portion of which he

had to borrow, and which only had a purchasing power of one-third its face value. This attempt to pay and discharge the debt was made outside of the military lines of the United States to satisfy a debt fully secured upon lands inside the Federal lines, in a currency not only unauthorized by the laws of the land in which the contract was made and where the debt was properly payable, but the proceeds were invested in the bonds of the Confederate States, issued for the avowed purpose of waging war against the United States. For this reason we are inclined to the opinion that this action of the fiduciary is wholly illegal and void. We might well rely upon this position as conclusive of the case. It is, however, contended that the fiduciary should not have accepted the payment of the debt in Confederate money. We do not deny that where the necessity of the estate requires it the fiduciary may, in the exercise of a sound discretion, do that which will promote the best interests of the estate. This rule is, however, general in its character, and its application must be controlled by the circumstances surrounding each case. In this case the estate was not embarrassed by debt and there was little or no need of money for any legitimate purpose.

But we do not rest this case alone upon that position. As before remarked, this attempt to pay off and discharge this debt was made to the agent or trustee of the estate and not to the principal in life. We have already said that the rule governing the action of a fiduciary to an estate is entirely different from the one that would apply to its owner, if living. In the case of the fiduciary he has but little or no discretion, while the other is not bound by any limitation of that character. The principal in a debt may accept a payment of a debt due him in depreciated currency, but his agent could not do so; and so it was held in the case of Ward *v.* Smith, 7 Wall., 447, that an agent cannot accept payment of a debt due his principal in depreciated currency, although it was the principal currency in which the ordinary business transactions of the country were conducted. The case cited would seem to be conclusive as to the validity of the payment made by the debtor to the representative in the case under consideration. Following closely upon this case was the case of Horn *v.* Lockhart, 17 Wall., 570, in which the Supreme Court of the United States held that where an executor had sold the property of his testator and received payment in Confederate money and invested it in Confederate bonds and settled his accounts before the probate court, not only was the action of the executor invalid, but the action of the probate court was a nullity and afforded him no protection. It is true that this ruling was based upon the ground that the action of the executor in making investments in Confederate bonds was in aid of the rebellion, and so it was in this case. The debt was collected in Confederate money and invested in Confederate bonds, and it falls within the rule of the law as laid down in the case cited. There was, however, more excuse for the action of the executor in the case cited than for the fiduciary in the one under consideration. The executor in the case cited was in the heart of the Confederacy and the country was entirely under the control of

the Confederate authorities, and it is but fair to presume that there was but little or no choice left him as to his course of action. Not so in this case. The military lines often shifted and the military authorities of the United States were not unfrequently in possession of Augusta county, the place of residence of the administratrix of the estate. Under such circumstances ample opportunity offered to enable both parties to settle the debts due the estate in money called for by the contract.

It is further insisted that Castleman's effort to pay off and discharge a debt under the circumstances was an illegal act upon his part and consequently void. It will be observed that Castleman's action for the most part was voluntary. There is no evidence in the record which discloses the fact that he was required to pay the notes past and falling due; but the evidence tends to show a feverish desire on his part to get rid of this indebtedness, with little expense, as speedily as possible and with the least inconvenience to himself. It is quite apparent that he wanted to pay the debt, which was contracted at the time with reference to the standard value of money in the United States, in a currency far below that value, and in fact possessing only a purchasing power of one-third of its apparent value. This attempt thus to satisfy a debt so well secured and when there existed no necessity for its collection, and when he was not required to pay with any other money than that called for in the contract, savors not only of a fraud but is an injustice to the heirs of this estate and should be disregarded. If the personal representatives were not justified in accepting in payment any other money than that called for by the contract, then clearly Castleman had no right to pay them in the money he did. In the language of Judge Davis, speaking for the court in the case of Fretz *v.* Stover, 22 Wall., 198: "It was a void act on his part to attempt to discharge his debt in this way, as well as a fraud in the personal representative to suffer him to do so." In the further support of this position we rely upon the law as stated in the case of McBurney *v.* Carson, 99 U. S., 567. There are other adjudications to this effect in the State tribunals, but we content ourselves with those we have cited to sustain this view of the case.

It is insisted, however, that the Supreme Court, in the case of Glasgow *v.* Lipse, 117 U. S., 327; 6 Sup. C't Rep., 757, has changed its position, and that under the law as stated in that case the payment by Castleman to the personal representatives was legal, and that as a consequence the plaintiff is not entitled to recover. We do not concur with this view. The cases are very different, and necessarily the rule of law applicable to this case cannot be the same. In that case the executors were authorized by the will to sell the land and convey it to the purchaser. There the contract was with the executor and not, as in the case under consideration, with the decedent, who, if living, could accept payment in any authorized money without regard to its value. As we have before said, the case is far different with an executor or an administrator. In Glasgow *v.* Lipse the executor, acting under the power conferred by the testator, sold the land and conveyed it by deed to one Speers.

After the purchase Speers died and Glasgow became under his will the executor. In that case a demand was made by the executor of Lipse upon Glasgow for the money due the estate, and Glasgow was informed that the heirs wanted their money, and that they were willing to accept it in Confederate notes, which had then become the principal currency of the country. In the case under consideration there was no demand made on the debtor for money for distribution among the heirs, nor does it appear that it was needed for any of the uses of the estate which would require the personal representative to call for the payment. We must therefore conclude that no legal excuse existed for the action of the fiduciaries in accepting, as they did, the payment of the debt due from Castleman in Confederate money. Certainly the debtor had taken no steps to coerce them to receive the money offered in discharge of his debts, but they determined to accept it and reinvest it. Under the circumstances the acceptance of the money in depreciated currency and its reinvestment was not only illegal, but, as we said, directly in aid of the rebellion and in contravention of public policy.

It is contended that the plaintiff should not recover on account of his laches in prosecuting this case. We do not concur in this defense. The record discloses the fact that the personal representatives have never made a settlement of the estate, and that they moved out of the State of Virginia and carried all papers with them relating to their administration; that the plaintiff came out of the war financially ruined and was unable to institute an action for want of means; that the deed of release to Castleman was not placed on record until near the close of the year 1871. The action, however, was commenced in the spring of 1881, and if the notes had been sued upon at law, the statute of limitations would not have barred a recovery upon them. Courts of equity usually follow the rule of law in the application of this statute. But this action is to enforce the deed of trust given to secure the payments of the purchase-money. The release was placed on the record only 10 years before the suit was commenced. It is sufficient to meet this position that a deed of trust can be enforced within 20 years after the maturity of the debts secured by it. All of the notes secured are within the time save one, and the period deducted from the operation of the statute during the war saves it.

But one more position of the defense remains that we think necessary to notice, and that is, under the circumstances were not the fiduciaries justified in their action? Numerous authorities have been cited from the highest courts of Virginia that when the necessities of the estate require money to pay debts it owes and where legatees and distributees consent to receive it, and when the security for the debt is doubtful, it is wise to accept the payment in depreciated currency. Of course, every case is governed more or less by its surroundings; but in this case none of the reasons assigned exist, as we have shown. We are of opinion that not only is the plaintiff, as a matter of strict legal right, entitled to the relief sought, but that it is only simple justice. The heirs of Castleman enjoy a landed estate of great value, which was purchased to be paid for in

lawful money of the United States, and the heirs of Opie, who are suing in this case, have never received the consideration promised under the contract entered into in 1856. We take no notice of the fact that the money received by the executors as payment of the debts due had some value for the reason that we hold the payment, so far as the parties to this action are concerned, was illegal and void, and any relief the heirs of Castleman may have, if, indeed, they have any, is against the executor.

A decree will be prepared in conformity with the views of the court as expressed in this opinion, referring the cause to a commissioner to ascertain the interests of the plaintiff and the two heirs, John Opie and Mrs. Mead, in the debt secured by the deed of trust upon the land sold by their ancestor.

Copy

Teste: L. B. DELLICKER,

Clerk Circuit Court U. S., D. W. Va.

Fee for copy, $1.80.

[Endorsed:] 282. 13411. Supreme Court U. S. Oct'r term, 1891. No. 282. S. W. Washington, adm'r, &c., app'ts, *vs.* H. L. Opie. Stipulation & addition to record.

[Stamped:] Office Supreme Court U. S. Filed Jan. 13, 1892. James H. McKenney, clerk.

Office Supreme Court U.S.
FILED
MAR 14 1892
JAMES H. McKENNEY,
CLERK

Henry W. Castleman's Adm'r.,

VS.

H. L. OPIE.

RECORD CASE NO. 13,411.

SUPREME COURT OF THE UNITED STATES.

BRIEF OF MARSHALL McCORMICK AND BARTON & BOYD FOR APPELLANT.

Henry W. Castleman's Adm'r.,

VS.

H. L. OPIE.

RECORD CASE NO. 13,411.

SUPREME COURT OF THE UNITED STATES.

BRIEF OF MARSHALL McCORMICK AND BARTON & BOYD FOR APPELLANT.

THE STATEMENT OF THE CASE.

The following citation is made from the opinion of the Judge of the court below, in order to show what he regarded as proven in the case—the ground upon which he rested his conclusion in favor of the appellee:

"In 1855 Hiram L. Opie, the ancestor of the plaintiff, sold to Henry W. Castleman, now deceased, a tract of land in Jefferson county, then in the State of Virginia, now West Virginia, for the sum of $41,733.66, $10,000 cash in hand and the balance in deferred instalments, evidenced by notes bearing date January 1, 1856, the first for $5,000, due January 1, 1857, the second for $5,000, payable January 1, 1858, and six other notes for $3,622.27¼, payable respectively January 1, 1859, 1860, 1861, 1862, 1863, 1864, all bearing interest from date. Shortly after the sale of his land he moved to Augusta county, Va., then and ever since a county in the State of Virginia, where he resided until his death in 1862. At the time of the sale a deed conveying the property was made by the vendor to the purchaser, and a deed of

trust was executed by the purchaser upon the land conveyed to secure the payment of the unpaid purchase money. When the grantor died there remained unpaid of the purchase money four bonds each for the sum of $3,622.27 due and payable the first day of January, 1861, 1862, 1863 and 1864, respectively, it being conceded that the interest was paid up to January, 1861.

"In 1861 certain States, afterwards known as the Confederate States, seceded from the Union, whereby war ensued between the United States and the so-called Confederate States, and during the war the county of Jefferson was for the most of the time in the military possession of the United States, while the county of Augusta during the same period was mostly in the military possession of the so-called Confederate States. In 1863 the State of West Virginia was created, whereby Jefferson county became a part of that State. In November, 1862, the widow of the deceased and Thomas L. Opie qualified as personal representatives of the estate of the decedent. Late in the year 1862 Castleman, knowing there was due on the purchase money of the bond which had matured January 1, 1861, and on the bond to fall due in January, 1862, something over $8,000, with unpaid interest, got together notes of the Confederate States and Virginia bank notes sufficient to pay off the notes payable January, 1861 and 1862, and crossed the military lines into the Confederate States and found Mrs. Opie, one of the personal representatives, and paid off and discharged the notes of 1861 and 1862 with Confederate money, which at the time was greatly depreciated. Subsequently Castleman paid and discharged the notes that fell due in January, 1863 and 1864, in the same kind of depreciated currency. At the time the payments were made Mary and John, heirs of the decedent, were under age, and the plaintiff in this action was absent from home and has not ratified the action of the personal representative of the estate. In 1865 a release was executed by the trustee in the deed of trust, upon the request of Mrs. Opie, administratrix of the estate. The estate of the decedent was not in debt, and the greater part of the money which came into the hands of the personal representatives was invested in bonds of the Confederate States."

With the first paragraph of the statement, there is no dispute. The second contains several half truths which are

the most dangerous kinds of misstatements, is wholly inaccurate as to one most important fact, and omits the clearly proven facts, which, in full accord with the long line of Federal and Virginia decisions, justify the appellants intestate in his payments of his bonds in a depreciated currency, and wholly excuse him from liability to appellee or to any one else.

As against the statements contained in the second paragraph of the opinion of the court below, it is respectfully insisted that the evidence (with hardly a credible word of dissent,) shows the following facts:

In the fall of 1862, H. L. Opie, the complainant in this case, who was then an adult and a soldier in the army of the Confederate States, went with Henry W. Castleman, the defendant, from his house, where he was then and subsequently at numerous times a guest, to Staunton, in Augusta county, Virginia, where the personal representatives of complainant's father were and resided. The purpose of Mr. Castleman's going, which in the nature of things must have been known to complainant, was to pay off the bonds which fell due January 1, 1861, and January 1, 1862, and the interest on the bonds which were then yet to mature. The defendant took with him money then known as Confederate States' notes and notes of banks incorporated in Virginia, issued before the war.

Mr. Castleman had procured this money in part by the sale of his crops; partly from the sale to Mr. Joseph Myers of a part of the same land that he had purchased from Mr. Hiram L. Opie; and the residue he borrowed from Colonel Morgan.

After reaching Staunton Mr. Henry W. Castleman visited Mrs. Nannie S. Opie, the administratrix of Hiram L. Opie, dec'd., and in the presence and with the full consent and approval of H. L. Opie, the complainant, who counted out the money, paid to the personal representatives of Hiram L. Opie, dec'd., the two bonds which fell due January 1, 1861, and January 1, 1862, and the interest to date on the

other two bonds, using for this purpose the Confederate notes and Virginia bank notes which he had taken to Staunton with him for that purpose.

Another bond was to mature January 1, 1863, and in response to his enquiry, the personal representatives of Hiram L. Opie, dec'd., informed Mr. Henry W. Castleman that they would also receive payment of that bond in Confederate States' notes. Mr. Castleman returned to his home, and with a view to the payment of his bond, sold the crops he had raised in 1862 for Confederate money. A short time before the bond became due, Mr. Castleman received notice from the personal representatives of Hiram L. Opie that they had changed their minds, and would receive only Virginia bank notes in payment of their debt. Thereupon Mr. Castleman borrowed from Mr. E. J. Smith, a wealthy citizen of Clarke county, Va., Virginia bank notes enough to pay his bond which fell due January 1, 1863; and about February 1, 1863, he sent that money by the hands of his neighbor, C. H. Lewis (now deceased,) who was to pass through Staunton on his way to Richmond, and who paid the money and returned the bond to Mr. Castleman.

On the fourth day of January, 1864, Mr. Castleman, by the hands of Mr. James Sinclair, an old and reputable citizen of Jefferson county, W. Va., paid to the personal representatives of Hiram L. Opie, dec'd., in Virginia bank notes, the bond which fell due January 1, 1864, with the accrued interest thereon, and thereupon, on the 4th day of January, 1864, the administratrix and administrator of Hiram L. Opie, dec'd., signed and gave to Mr. Sinclair a paper directing Hon. R. Y. Conrad, the trustee in the deed of trust executed by Henry W. Castleman, to release the same. Shortly thereafter Mr. Conrad did execute the deed of release, and it was duly recorded in the clerk's office of the county court of Jefferson county, West Va.

From 1861 to 1865 the civil war was pending and more or less flagrant all along the Valley of Virginia, of which Jefferson and Augusta counties then politically (as they still

do geographically) formed parts. Augusta county was almost continuously in the Confederate lines, while Jefferson county was first in the possession of one and then of the other of the two contending armies; but during the greater part of the time it was occupied by neither, but was open to both, who, by means of raiding parties and spasmodic cavalry expeditions, about equally availed themselves of their privileges. There was scarcely any time, however, when communication by private conveyance was not free and almost unobstructed between Jefferson and Augusta. The former as much as the latter was CONFEDERATE GROUND, and notes of the Confederate States was almost the sole currency of both counties, being the generally recognized medium of barter and trade, for the payment of past debts and the basis of future contracts.

During the war complainant was a Confederate soldier, and when hostilities ceased returned to his home at or near Staunton, received his share of the Virginia bank notes which Castleman had paid, and continued to reside in Staunton until 1873, when he removed to Covington, Ky., where he seems to have resided until December, 1880, when, nearly seventeen years after the last purchase money had been paid, he commenced this suit.

Mary Meade, the sister of complainant, it is averred, was born in 1842, and hence, while she was just under age at the time of the payments in 1862, she was of full age at the time of the payments in 1863 and 1864. John N. Opie, the other party who is claimed to have been a minor, became of age about 1865 or 1866.

When the war terminated the executors divided among all the heirs (Mary Meade and John N. Opie being then of full age, and receiving their shares) the Virginia bank notes paid by Castleman, and which still had considerable value.

Although the war ended in 1865, and the U. S. Courts were then fully organized, the complainant did not bring his suit until December 4th, 1880—nearly sixteen years after the termination of the war.

Mrs. Mary Meade was of age in 1863, and John N. Opie in 1865 or 1866, and yet neither of them brought any suit at all, or made otherwise any claim or demand upon Castleman until March, 1882, when they filed their answers—about seventeen years after the termination of the war, and the removal of their disabilities otherwise.

THE EVIDENCE AS BETWEEN THE STATEMENTS.

So far as the complainant is concerned, the case is disposed of if it be true, as Castleman testifies, that complainant accompanied him to Staunton, was present at the payment of the bonds, and ratified and approved of the same.

On this particular point H. L. Opie, in a part of his deposition, makes one statement, and H. W. Castleman another, and on this point, too, there are no other witnesses.

Let these tests then be applied to the accuracy or credulity of Opie:

(1.) A comparison between his bill and his evidence.

(2.) A comparison between his testimony in chief and his cross-examination.

(3.) Opie's ability to have produced his mother and his brother to testify for him, if his statement had been true; and his failure to do so.

(4.) The inherent verity of H. W. Castleman's evidence on its face, as compared with the slippery, shuffling, evasive and contradictory statements of Opie.

(5.) The flat contradiction of many of the allegations of complainant's bill and of his testimony, by the testimony of wholly disinterested witnesses.

TEST NO. 1.

Compare the bill of complainant with his own testimony:

BILL SWORN TO.

"That sometime during the fall of the year 1864, or early in the winter of 1865 perhaps, but not earlier than the fall of 1864, when what was then and there known as Confederate money, which was a note or promise of the Confederate States, as then known, to pay, was almost worthless in said county of Augusta, and totally so within the lines of the armies of the government of the United States, the said Henry W. Castleman having before that time heard of the death of said H. L. Opie, and conceiving the idea of taking up his said bonds which were then in the hands of said N. S. Opie or Thomas L. Opie, but in said Nannie's, as your orator charges, by paying them off in said worthless, next to worthless, Confederate money, and of practicing a great wrong and fraud, not only upon said Nannie, but upon all of said children of your said orator's father, including your orator, gathered together a large amount of said Confederate notes and went once or twice from his home in the county of Jefferson and from within the lines of the armies of the government of the United States, to the said county of Augusta within the lines of the armies of the Confederate States, taking with him said Confederate money; that after reaching said county of Augusta, he, the said Castleman, proceeded to carry out his wrong—so conceived—by appealing to the fears of the said Nannie S. and Thomas, by persuasion and with the aid of one or more persons, then employed by him to aid him in the accomplishment of his purpose, he, the said Castleman, succeeded in getting said Nannie S. and Thomas to deliver up to him all of said single bills and receive therefor nothing but said worthless Confederate money. * * * * Nothing was ever paid by said Castleman upon said indebtedness after the death of said Hierome except

COMPLAINANT'S DEPOSITION.

2nd Question, cross-examination—Was anybody present, if so, who, at the time Mr. Castleman paid his bonds?

Ans.—I do not know.

3rd Ques.—Did he have any difficulty in inducing them to receive Confederate money in payment of his bonds?

Ans.—*I do not know.*

4th Ques.—Did he appeal to them, or use any means, deceptive or otherwise, to get them to accept such currency?

Ans.—*I do not know.*

5th Ques.—Did he employ in Staunton any person or persons to aid him to accomplish his purpose—that is to induce them to receive Confederate money?

Ans.—It is said he employed H. M. Bell, who was attorney for the estate to induce my mother to accept this money.

6th Ques.—Who said he employed Mr. Bell to aid him?

Ans.—Various persons in Staunton.

7th Ques.—Can you name any one or more of the various persons?

Ans.—I cannot now, sir.

8th Ques.—Did you ever know their names?

Ans.—I did, sir.

9th Ques.—When did you last recollect their names?

Ans.—That I cannot tell.

10th Ques.—Have you ever recollected them since the war?

Ans.—No sir.

11th Ques.—Upon whose information then did you make the statement in your bill filed in this case sworn to by you, that Mr. Castleman did employ various persons in Staunton to aid him to induce the administrators to accept Confederate money?

Ans.—I do not recollect such a statement being in the bill; I have not the bill before me.

12th Ques.—If there is such a state-

in such worthless Confederate money."

ment in the bill, is it true or otherwise?

Ans.—It is true, my mother stated to me that she was induced to take this money upon the advice of Mr. Bell, who had been consulted by Mr. Castleman in reference to the same, and that she would not have taken this money had it not been for the advice of Mr. Bell.

13th Ques.—Was not Mr. Bell the counsel of your mother and brother in their official character?

Ans.—Yes, sir, I so understood.

15th Ques.—Is he the person who conspired with Mr. Castleman to induce the administrator to receive Confederate money?

Ans.—That I cannot say. That I do not know.

16th Ques.—Then Col. Opie, I understand you can not give the names of any persons employed by Mr. Castleman to aid him; not the names of any of the various persons in Staunton who told you he did employ persons for that purpose?

Ans.—I said I could not recollect. I was away in the army.

TEST NO. 2.

Compare complainant's testimony in chief with that given on cross-examination:

Complainant testifies (answer 3) that he was a soldier in the Valley in 1862; don't remember being home until January 1, 1863; may have been but don't remember; was at home at intervals—can't give dates: (Answer 4) remembers going to Middletown with Castleman, but don't remember going all the way to Staunton: (Answer 5) never was present when one dollar was paid by Castleman to his mother or brother; had no knowledge of the bonds being paid:—(Answer 6) first heard of their payment shortly after they were paid, from the personal representatives: (Answer 8) never was present and never saw a dollar paid, "and of my own personal knowledge do not know when they were paid

or in what paid, except from what Castleman told me" : (Ans. 17) "I know that I did not consent, but protested and did so to Mr. Castleman."

Against this the witness on cross-examination admits :

(Answer 26) thinks he was at Castleman's in summer of 1862 : (Answer 28) did not protest against taking Confederate money until 1863 and 1864 : (Answer 31) IF I DID GIVE A CONSENT to Mr. Castleman IT WAS A FORCED CONSENT.—If I did give consent it was done through the earnest request and entreaties of my mother. I do not recollect that I ever gave such consent : (Answer 33) Frequently during the war my mother begged me to take the money, as it would be unpatriotic not to take it, and unbecoming a Southern man "to go back" on his country, when I would protest against accepting the Confederate money in payment of the Castleman bonds, which frequently occurred. (Quere 33½) "Did you give your consent ?" Ans.—"I do not remember; I may have done so." (Quere and Ans. 34 and 35) do not remember whether did or did not approve of payment of bonds in 1862, "but if I did, I did it under protest, as I have before stated."

Is not this a substantial concession by Opie that he did consent to the payment of the bonds by Castleman, and a complete contradiction both of his own testimony in chief, and of the whole case made by the bill ?

TEST NO. 3.

OPIE'S FAILURE TO SUBTANTIATE HIS STATEMENT BY THOSE OF HIS MOTHER AND BROTHER.

If Opie really believed that in his bill and his evidence he was making a true statement of the case ; or if that statement had been true he could surely have availed himself of the testimony of Mrs. Nannie S. Opie, the mother, and Dr. Thomas Opie, the brother of complainant, who would certainly have sustained him if his statements had been accurate, and they ran no pecuniary risk in doing so, inasmuch

as complainant in his bill disclaims imposing any liability upon them.

It appears from the notice produced in evidence and the deposition of Henry W. Castleman (Answer 29,) that defendant was summoned to Baltimore to be present at the taking of the depositions of Mrs. and Dr. Opie: that he attended at the time and place with his counsel, and that neither complainant nor witnesses appeared. Comment upon this is unnecessary, for the silence of such witnesses under these circumstances is for defendant's cause more eloquent than their speech.

These depositions on paper are at best but counterfeits of the living man, and tell but little of the very manner and complexion of the witness. A close analysis of this testimony, however, gives a better idea of the deponent than we usually obtain from paper evidence.

TEST NO. 4.

Compare the testimony of H. W. Castleman with that of H. L. Opie.

Take Castleman's brief consistent and really uncontradicted statement of the essential point of H. L. Opie's acquiescence.

(Answer 13) "He (the complainant) was present at the time when I paid the money in 1862 at his mother's house near Staunton, and counted the money over for his mother." (Answer 14) "He knew of the payment and he consented and approved of it."

On this point [Test 2] we have already read Opie's testimony. Take now a comparison of parts of his bill and his testimony, to see if he can be believed on any point.

First—"That some time during the fall of the year 1864 or early in the winter of 1865, or *perhaps* earlier than the fall of 1864, when what was then and there known as Confederate money * * * was almost worthless," &c.

The later he put it the worse the money would have been.

Contra—(Answer 4) "Two of said bonds of said Castleman were paid to my mother, the widow of my father, and my brother, Dr. Thomas Opie,

in the fall or winter of 1862, in Confederate money * * * The third bond fell due in January, 1863, and was paid in February, 1863, in Confederate money * * The fourth bond was paid in January, 1864, in worthless Virginia bank notes." (Answer 6) "I first learned of these payments shortly after they were made."

Second—"He the said Castleman succeeded in getting said Nannie S. and said Thomas to deliver up to him *all* of said single bills, and receiving therefor *nothing but said worthless Confederate money.*" * * "*Nothing* was ever paid by said Castleman upon said indebtedness after the death of said Hiram *except such worthless Confederate money.*"

Contra.—(Answer 4) "The fourth bond was paid in January, 1864, in worthless Virginia bank notes." (Answer 10) "The Virginia money was held until after the war and divided between the heirs." (Answer 7) "The payment made in 1864 was made by Mr. Sinclair in Virginia bank notes. I know this because I got a portion of them after the war."

Third—"The said Henry W. Castleman * * * practicing a great wrong and fraud * * * gathering together a large amount of such Confederate notes * *" "*I do know*, however, that said Henry W. Castleman, immediately after my father's death in 1862, bought up large quantities of Confederate money in the county of Jefferson and elsewhere, and wilfully, knowingly and fraudulently came from within the Federal lines into the Confederate lines and paid this worthless Confederate money and Virginia bank notes to the personal representatives of my father's estate. This was a matter of public notoriety in the county of Jefferson."—Dep. Answer 5.

CONTRA—Mr. Opie is a lawyer, and must be taken to know the difference between evidence and hearsay tattle.

Hear the cross-examination:

Quere 20—"How do you know Castleman bought up a large quantity of Confederate money in Jefferson county and elsewhere for the purpose of paying off his land bonds?"

Answer—"He told me so. He told me he had sold his wheat and bought Confederate money. Charles H. Lewis, *who is dead*, told me so. Dr. James Williams, *who is also dead*, told me so. *Robert Hume Butcher told me so.* I do not remember any body else now. *It is a matter of public notoriety in Jefferson county.*"

[Italics are ours.]

TEST NO. 5.

THE FLAT CONTRADICTION OF COMPLAINANT BY DISINTERESTED WITNESSES.

Take for instance the last answer (to Ques. 20) quoted in Test 4.

Mr. Castleman denied and disproved the statement. Mr. Chas. H. Lewis was dead and silent. Dr. James Williams could not speak for the same reason. Robert Hume Butcher, the uncle of complainant by marriage, in answer to the enquiry whether he had ever given the complainant any such information, said (Answer 3): "I never told him or any one else. I have no knowledge of where the money came from."

Although "a matter of public notoriety in Jefferson county," no other living man is called to sustain the truth of complainant's statements.

But to quote complainant again.

"By appealing to the fears of said Nannie S. and Thomas; by persuasion and with the aid of one or more persons then employed by him to aid in the accomplishment of his purpose, he, the said Castleman, succeeded", &c., * *

CONTRA.—Bearing in mind what this complainant has as a witness said (ante) of his having consented AT HIS MOTHER'S EARNEST ENTREATIES to the receipt of those payments which in 1862 were made in Confederate money: that the bond of 1863 was paid by Charles H. Lewis (now dead): and that of 1864 by James Sinclair, there is no room for truth in this statement unless one or the other or both of these two persons aided Mr. Castleman, who was not present, in terrifying Mrs. Opie into the receipt of that money.

But hear the witness (the complainant) on cross-examination:

Quere 3.—"Did he have any difficulty in inducing them (the personal representatives) to receive Confederate money in payment of his bonds?"

Ans.—I do not know.

Quere 4.—Did he appeal to them, or persuade them, or by any other means, deceptive or otherwise, in order to get them to accept such currency?

Ans.—I do not know.

Quere 5.—Did he employ in Staunton any person or persons to aid him to accomplish his purpose—that is, to induce them to receive Confederate money?

Ans.—It is said he employed H. M. Bell, who was the attorney for the estate, to induce my mother to accept this money.

Quere 6.—Who said he employed H. M. Bell to aid him?

Ans.—Various persons in Staunton.

Quere 7.—Can you name one or more of those various persons?

Ans.—I cannot now.

Quere 8.—Did you ever know their names?

Ans.—I did, sir.

Quere 9.—When did you last recollect their names?

Ans.—That I cannot tell.

Quere 10.—Have you recollected them since the war?

Ans.—No, sir.

And of the same character is the residue of this cross-examination.

Not to regard Mr. Castleman's testimony on this point, it is enough to read Mr. Sinclair's, to learn how much force, how many threats, and what over-persuasion was used to compel the personal representatives of Hiram L. Opie, dec'd. to receive payment of Mr. Castleman's bonds.

In answer to the question as to the circumstances of the payment made by him in 1864, and who was present, Mr. Sinclair said:

(Answer 5) "Only Mrs. Opie at the time. I handed it over to Mrs. Opie at the Bank, where it was received and counted by one of the officers of the Bank, either cashier or teller, I can't recollect which. Dr. Opie Mrs. Opie and myself were together before that time, and that evening after the payment of the bond he endorsed the receipt on it. They offered no objection to receiving the money or giving up the bond. They received it freely and voluntarily."

(Answer 6) "They gave me an order to the trustee to execute a deed of release, which order I handed over to Mr. Castleman. Thomas Opie wrote the order. I used no persuasion whatever—it was done right along—nothing said as to it—they did it without hesitation or objection."

Bearing in mind that Mr. Opie is a lawyer and a man of education, and regarding what we have cited as a fair test of the accuracy of his statements, both as complainant and witness, we think we may with confidence altogether dismiss what he says from consideration, when it conflicts with the

testimony of Henry W. Castleman, or any other witness in this case.

We especially invoke this treatment for the various statements made by Complainant and Defendant of what occurred between them at Wheeling in 1865.

All this is independent of the rule, which we invoke, that when (as in this case) the bill does not waive an answer under oath, the plaintiff must establish his case by two witnesses, or else by one witness and corroberating circumstances. In this case there is but one witness and the "corroberating circumstances" CORROBERATE the defendant's case. If then this testimony sustains the truth of the statement, that complainant approved and acquiesced in Castleman's payments, it ends the case as to him, and as it dismisses the bill it ends it as to all parties to the suit.

But the rules of law governing both the question of laches and the circumstances which the decided cases have determined to justify the payment of a depreciated currency to fiduciaries, seem to conclude Mary Meade and John N. Opie as completely as they do H. L. Opie.

Consider, then:

THE LACHES OF THE PARTIES.

Mary Meade and John N. Opie aver in their answers (although there is no proof of it in the case except the testimony of H. L. Opie), that they were minors at the time that some of these payments were made. According to this statement, Mary Meade was born in 1842; and hence, while she was just under age at the time of the payments in 1862, she was of full age at the time of the payments in 1863 and 1864. John N. Opie, the other party who is claimed to have been a minor, became of age about 1865 or 1866.

Hence, while the complainant delayed bringing his suit from 1865 up to December, 1880, these DEFENDANTS, who claim the indulgence due to their infancy, were guilty of neglect and laches for the same length of time; for the disability of infancy had terminated from fourteen to seventeen years before this suit was brought. The demurrer, then, on

the ground of laches, applies to the demands of H. L. Opie, the complainant, and equally also to that of Mary Meade and John N. Opie, although the former is asserted by bill, and the latter by answer only.

The last payment of the purchase money bonds was made in January, 1864. This suit was instituted in December, 1880, after an interval of nearly seventeen years. In the mean time Castleman has sold portions of his land to two parties, and has encumbered the residue to a third. Opie states that he knew of the payments soon after they were made: he knew ot the investments in Confederate bonds, and after the war he and the others received their shares of the Virginia money, and no doubt used it; he lived near Staunton until 1873, and then moved to Covington, Ky., where he now resides.

He says he did not know the exact condition of his father's estate, and did not have access to the papers; did not know of the release, &c. These, with his impecunious condition, he alleges as the excuses for not sooner instituting his suit. But it does not appear that any greater knowledge of the condition of the estate or freer access to the papers was needed by him for the purposes of his suit, or that at the time his suit was instituted he had or has since acquired the one or attained the other. He is a lawyer, and could have brought his own suit, in case he could not have found one of his fraternity to at least append his name without pay to such bill as he himself should draw. It is hardly to be supposed that owning a farm and traveling to and fro, he could not have raised enough to pay the writ tax or the cost of taking the one deposition filed in this case. The decided cases frown upon such delays as this, and turn deaf ears to such frivolous excuses for nonaction; especially where, as here, third parties have acquired interests, and buyer and seller have been lulled into absolute security.

THE LAW AS TO LACHES.

"Nothing can call forth a court of equity into activity but CONSCIENCE, GOOD FAITH, and REASONABLE DILIGENCE.

Where these are wanting, the court is passive and does nothing. Laches and neglect are always discountenanced and therefore from the beginning of this jurisdiction there was always a limitation of suits in this court.

Brown vs. County of Buena Vista, 95 U. S. R. (5 Otto) 160, and numerous cases cited:

Harrison et als vs. Gibson et als, 23 Gratt. 223.

Stamper's Admr. vs. Garnett et als, 31 Gratt. 550.

Justis vs. English et als, 30 Gratt. 576.

The doctrine of laches does not involve the merits of the case, or such consideration thereof as the court would have given to it if the demand had been made before the claim became stale. It is enough to know that the complainant has sat idly by without sufficient excuse for non-action, to persuade the court to refuse to look into the matter at all.

In Badger vs. Badger, 2 Wall. 94, Justice Grier, quoting the language used in numerous cases, says:

"But there is a defence peculiar to courts of equity, founded on lapse of time and the staleness of the claim, WHERE NO LIMITATION GOVERNS THE CASE. In such cases courts of equity act upon their own inherent doctrine of discouraging, for the peace of society, antiquated demands, refuse to interfere where there has been gross laches in prosecuting the claim, or long acquiescence in the assertion of adverse rights. Long acquiescence and laches by parties out of possession are productive of much hardship and injustice to others, and cannot be excused but by showing some actual hindrance or impediment, caused by the fraud or concealment of the parties in possession, which will appeal to the conscience of the chancellor."

"The law of laches," said Justice Nelson in Brown vs. County of Buena Vista, 95 U. S. R. (5 Otto) 161, "like the principle of the limitations of action, was dictated by experience, and is founded in a salutary policy. The lapse of time carries with it the memory and life of witnesses, the muniments of evidence, and other means of proof. The rule which gives it the effect prescribed is necessary to the repose and welfare of society. A departure from it would open an inlet to the evils intended to be excluded."

"No one," said President Tucker in Burwell's Exors. vs. Anderson's Admr. &c., 3 Leigh 353, "feels more strongly than I, the salutary influence upon the peace and repose of society of the principle which forbids us to ENCOURAGE STALE CLAIMS, or to unravel long settled accounts."

In Hercy vs. Dinwoody, 3 Ves. J. 87, the Master of the Rolls said: "For the reasons given in Deloraine vs. Brown, 3 Bro. C C 633, independent of the question of satisfaction, but on account of the very neglect, and the mischief and disturbance that may arise to families, though the presumption of satisfaction is not so strong; yet the laches and neglect may be such to make it a matter of PUBLIC POLICY that the party guilty of it shall abide by the consequences."

"It is a part of the general doctrine, that to avoid the lapse of time or statute of limitation, the fraud must have been one *that was concealed* from the plaintiff by the defendant, or which was of such a character as necessarily implied concealment. Neither of these principles can apply to the defendant in this case. The acts which constituted the fraud as alleged in the bill were open and public acts."

Norris vs. Haggin, 136 U. S. p. 392.

Here the alleged fraud was known to the complainant shortly after its perpetration, according to his own admission. The alleged fraud was not of such a character as implied concealment, and yet with a full knowledge of it, he waits until nearly seventeen years have elapsed before he seeks relief against it.

"Where the holder of a judgment stands by, sees the land on which his judgment was a lien sold, and the proceeds distributed, and fails to assert his lien on said land or its proceeds, he will thereafter be estopped from asserting it, either against the land in the hands of purchasers, or against those who have received the proceeds of the sale of such land."

Chancellor Fitzhugh in Henry & Blackwell vs. Ould & Carrington, Virginia Law Journal, vol. 7, page 54.

"It is an inherent doctrine of courts of equity to refuse relief where there have been gross laches in prosecuting rights, or long and unreasonable acquiescence in the assertion of adverse rights. This doctrine, founded on considerations of natural justice and public policy, is always firmly enforced, especially where the immediate parties to the transaction are dead. * * * The devisees, though in form defendants, are in substance

plaintiffs, seeking by ejectment to disturb a status, in which, without sufficient explanation, they have long acquiesced; and it is too late for them to obtain relief here, without disregard of established principles."

Hatcher et al vs. Hall et al, 77 Va. R. 573.

"It is a familiar doctrine of courts of equity that nothing can call forth these courts into activity but conscience, good faith, and reasonable diligence. Where these are wanting the court is passive."

Hill et als vs. Umberger, Admr. et als 77 Va. R. 653.

Using almost identical language:

Updike's Admr. et als vs. Lane 78 Va. R. 132.

Castleman's Admr. et als vs. Dorsey et als, Id. page 342.

Bell & wife vs. Moon, Com. &c., 79 Va. R. 341.

"Laches is such neglect to do what one should do, as warrants the presumption that he has abandoned his claim, and declines to assert his right."

Wissler vs. Craig's Admr., 80 Va. R. 30

"In view of this long and unexplained delay, the bill ought to have been dismissed. * * * * * * This is a rule essential to the peace and welfare of society, and ought to be firmly enforced * * * * * * *"

Morgan vs. Fisher, 10 Virginia Law Journal 696.

In the notes to the case of Smith vs. Thompson, 54 American Decisions, page 130 to page 134, the decided cases from the different States are well collected, the conclusions being substantial with, and indeed almost in the same phraseology with the citations we have made from the Virginia and Supreme Court cases.

These cases and others which might be cited, very strongly reiterate the doctrine and principles of laches, as we have already invoked them. If they can be said to add nothing new, yet they serve to show how consistent the Courts are, for peace sake, that injustice may not be done, and to preserve a wise public policy, in refusing their aid to parties who have slept upon their rights, and thus lulled others into security so that after lapse of time, change of interests, acquiring new rights and loss of evidence by death of witnesses and obscurity of events, if a Court should now undertake to open up questions which the complaining parties have themselves, by long acquiesence allowed to be regarded as closed, it would in all likelihood do injustice in the particu-

lar case, besides violating a wise and time-honoured policy to refuse its aid to a stale claim, whatever might have been its original, and still apparent, righteousness.

THE LAW OF THE CASE

It is rather late in the day to argue any of the points of this case as original propositions, but we think we can make it clear for the appellant by a review of the decided cases.

In Virginia, among the other causes which have been held to justify a fiduciary in receiving Confederate money in discharge of a debt, are cited, authority in the will; the necessities of the estate; opportunities for its use to pay debts; WHEN LEGATEES OR DISTRIBUTEES CONSENT TO RECEIVE IT; and when the security for the debt is so doubtful that it is wiser to take it in a depreciated currency.

Myers vs. Zetelle, 21 Gratt., 752;
Staples vs. Staples, 24 Gratt., 242.
Mills vs. Mills, 28 Gratt., 476.
Campbell vs. Campbell, 22 Gratt., 686.
Moss vs. Moorman, 24 Gratt., 97.
Williams vs. Skinker, 25 Gratt., 507.
Tosh vs. Robertson, 27 Gratt., 277.
Hannah's Admr. vs. Boyd and wife et als, Id. 692.

The rules thus laid down are so general that the circumstances of each particular case are required to be nicely scanned in order to their just application. But all through the decided causes it is the absence of the consent or acquiescense alone that permits any question to be raised as to the propriety of the receipt of Confederate money by a fiduciary. In Williams' Admrs. vs. Skinker and wife, 25 Gratt. 515, the enquiry is whether the fiduciary was justified in receiving Confederate money "without the consent of the legatee to whom it was to be paid * * * in other words, whether to the extent of receiving the proporton of the debt due to Mrs. Skinker without her consent, he has committed a devastavit." And the decision of this case is made to rest wholly upon the fact that what the executor did was without the consent of the complainant, and in the suit it was

conceded all around that as to those legatees who consented, the acts of the executor were valid and binding. (25 Gratt. 525 to 528.)

In the case at bar complainant is proved to have consented to the receipt of the money paid in 1862. He himself makes love for his country and his cause the reason for his consent, and if that reason applied to the payment of 1862 it would apply with greater force to the payments of 1863 and 1864.

But to those payments he also consented; not formally by words, perhaps, but by deeds, which speak with even greater emphasis. He says he knew of the payments shortly after they were made; he knew then where the Virginia bank notes came from, and yet without demurrer he received and no doubt used his full share of them. He thereby discharged and acquitted the executors for their act, and in doing so he discharged also the defendant, who had paid the debt.

The Virginia cases place the debtor who has paid in Confederate money on a much more liberal footing than they do the executors who received it. In Tosh vs. Robertson, 27 Gratt. 278, Judge Christian says, "We do not mean to say that in every case where an executor may be held liable, as committing a devastavit, for collecting a good debt, well secured and payable in gold, in a depreciated currency, that the party who pays the debt is necessarily liable as participating in such default or fraud of the executor. On the contrary, there may be cases where the collection of a debt in a depreciated currency would be a devastavit in the executor, and yet no liability is fixed upon the party who pays the debt. He, the debtor, does not know and is not generally bound to enquire what may be the necessities of the estate represented by the executors. For aught he knows, the debt which he pays may pay a debt due from the estate, or pay a legacy which a legatee may be willing to receive in a depreciated currency."

Again, in Patteson et als vs. Bondurant's Ex'ors et als, 30 Gratt. 101, it is said, " * * he could not be presumed

to know what was the condition of the estate, or that there might not be uses for which it could be advantageously received and applied for the benefit of the estate, or that there might be a necessity on the executor to receive it for payment of debts or legacies."

In this last case the debtor was held not to be discharged by the executor's receipt, but this was a flagrant case of fraud, terrorism, and deceit; just such a case as complainant has described in his bill, but wholly different from that proved by the evidence.

It must be borne in mind too, that the question of the debtor's knowledge of the propriety of the payment and receipt of the money must be determined by what he knew or should have known at the time, and not by what came to his knowledge or happened afterwards.

There is nothing in this case to put any such presumption upon Mr. Castleman. He anticipated the maturity of no debt, but simply paid his bonds when and as they became due. He was guilty of no fraud. He used no undue persuasion. He neither had nor exercised any influence with the parties to receive the money, but from the beginning to the end all his transactions were open, deliberate and fair. The parties best capable of judging of the propriety of taking the money exercised their best judgment in determining to take it. Had they declined to do so it would not have been paid, and Mr. Castleman could not and would not have attempted to force a payment. After 1862 they declined to receive Confederate money, and demanded payment in a much better currency, i. e. Virginia bank notes, many of which were worth from 75 to 87 cents in the dollar after the war. Castleman consented to this demand and at considerable loss to himself raised the money and paid it.

These circumstances by themselves justify the debtor, if they do not also wholly discharge the executors from liability. But when in addition we find that the only human being who now makes complaint of that transaction was present, consented thereto, and with full knowledge received his

share of the money paid, we wonder that such a bill as this was ever filed.

But we do not rely alone upon the Virginia cases.

Even when the case involves the liability of the executor, and not the question of the debtor's discharge, the decided causes have generally held that the mere receipt of Confederate notes is not sufficient evidence of negligence to surcharge the trustee or executor, but that the true measure of liability is the course of conduct that, under all the circumstances, would have been dictated by prudence.

See the cases collected and cited in Leading Cases in Equity, Vol. II, part 2, page 1804—ed. 1877.

The early notion that Confederate money was and was to be treated only as a commodity, and not a currency in which debts could be contracted and with which discharged, was wholly set aside by the Supreme Court. [Thorington vs. Smith, 8 Wall., Stewart vs. Salomon, 94 U. S. R. (4 Otto) 434, Bissell vs. Hayward, 96 U. S. R. (6 Otto) 580], and the judicial and legislative acts of the States in rebellion, except so far as they were hostile in their purpose or mode of enforcement to the authority of the national government, have been declared by the highest tribunal to be of unquestioned validity. (Horn vs. Lockhart, 17 Wall. 580; McBurney vs. Carson, 99 U. S. R. [9 Otto] 571.) The line has been drawn by the Supreme court against the validity of dealings in Confederate money, where a party in the Confederacy has undertaken to discharge a debt due to a non-resident who could exercise no volitions in the matter, or who if represented at all was represented by an agent who exceeded his authority, or when the courts of the Confederate States or of the several States in rebellion have authorized the acceptance of such currency in discharge of a well secured debt, and the investment of the money in Confederate bonds without the consent or acquiescence of the parties in interest.

Thus the investment by an executor, in the absence of such knowledge or consent, in Confederate bonds, of money, although done by authority of law and by decree of a court

of otherwise competent jurisdiction, has been held to be wholly invalid [McBurney vs. Carson, 99 U. S. R. (6 Otto) 193.] But the decisions on this subject confine the protection of the courts wholly to cases of transactions where the creditor was not represented at all, or else represented by an agent who wholly exceeded his powers in accepting a currency which without express authority he had no right to receive. In almost every case there is, if not the evidence of direct fraud, at least the absence of the parties injured, and no proof or possibility of their consent or acquiescence. Thus in Smith vs. Wood, 7 Wall. 447, the parties were on opposite sides of the belligerent lines, and the Bank, the agent that received the depreciated currency, did not even have the debtor's bonds for collection.

In Horn vs. Lockhart, 17 Wall. 570, the legatees lived in Texas, and the executor in Alabama. The money came to the latter's hands in 1858, and no explanation was given for the executor's delay in settling the estate before the war commenced. He did not settle the estate or distribute the money, but invested the same in Confederate bonds, and he was justly held (in spite of the decree of the Alabama court) liable to the legatees for the full amount.

In Fritz vs. Stover, 22 Wall. 198, the creditor lived in Pennsylvania and the debtor in Virginia. The creditor's attorney in Virginia, if indeed he was the attorney, without authrioty, and, it may be said, against instructions, received payment in Confederate money, and the debtor was held not discharged. In this case there was no communication between the creditor and the debtor, and all that passed between the creditor and his attorney between 1861 and 1864 was a letter from the attorney to Fritz, written in 1864, in which he said "that the papers were all safe, and that HE WOULD KEEP THEM SAFE, as he could collect nothing but Confederate money," whereas he had in fact already collected the debt; and moreover, the court reached the conclusion that not only did Chilton have no authority to receive the money, but that there was collusion between him and Stover, the debtor.

In McBurney vs. Carson, 99 U. S. R (9 Otto) 567, these were the circumstances:

Carson died in 1856. By his will he gave his executor power to sell his lands, and appointed him trustee to hold the proceeds and to pay one-third of the interest thereon to the widow, and the remaining two-thirds to the education and support of the children until their maturity. The executor sold the land in 1857 for $50,000, and received $15,000 in cash and took bonds and a mortgage for the deferred payments, the time of the maturity of which is not stated in the reported case.

The land was in South Carolina, where the executor and purchaser resided, but the widow went with her children to New York in 1861, where she continued to reside with them until after the close of the war. In 1863 the purchaser from the executor sold the land for $100,000 in Confederate money, and in that currency the executor received payment of his bonds, released the mortgage, and invested the money in Confederate bonds.

As soon as the war ended, the Carsons instituted their suit. It was obvious that the executor had no pretence or excuse whatever for receiving payment of that well secured debt in Confederate money, and that he could make no possible use of it to the advantage of the estate he represented. The court was, moreover, satisfied from the evidence that there was a a plot, and that the purchasers were its contrivers.

It is not to be wondered, then, that the court held the payment and release of the mortgage no discharge of the debt, and that the whole transaction was invalid.

The true statement of these cases shows the obvious difference between them and the one at bar.

In each of those cited, six circumstances were conspicuously present:

First: The lack of original authority in the agent.

Second: The absence of consent or acquiescence.

Third: The totally unnecessary sacrifice of the absent principal's rights.

FOURTH : The collusion between the debtor and the agent or the gross imposition by the latter upon the former.

FIFTH : Such circumstances as were persuasive of the conclusion that the debtor was as well informed of the agent's evil doing, as the agent was himself.

SIXTH : The diligent and active assertion by the creditor of his rights without permitting undue lapse of time, or being guilty of laches that may have lulled other parties into security, and led them to purchase from the debtor or to acquire liens upon his land in the confident belief that what appeared good upon the record was truly what it seemed.

The presence of these circumstances in the cases cited is as plainly shown as the absence of each and every one of them is conspicuous in the case at bar.

There is no difference between the State and Federal cases on this subject, for the general principles are so laid in both that had either decided the cases that came before the other, the conclusions of each high tribunal would have been the same.

The latest utterance of this court on the question now under discussion put at rest the controversy in this case: We refer to the case of Glasgow vs. Lipse 117 U. S. R. p. 327, decided March 15, 1886, and to it we invite special attention and a careful analysis of and comparison with this case.

In the case at bar the payments complained of were made in the fall of 1862, in February 1863, and January 4th, 1864. The Executors and Legatees were all residents of the State and neighborhood where the payments were made. The complainant knew of and assisted at the first payment, and without objection received his share of the other two payments, and admits that he knew of them shortly after they were made. He resided in the same neighborhood for eleven years after the first payment was made, and for nine years after, without objection, receiving his share of the last payment, which he appropriated and does not even offer to return. He did not institute this suit until about eighteen years after the first, and sixteen years after the last payment,

and urges no reason that is even plausible for his delay. Except the matter of actual consent to the payments, almost the same thing may be said of those who have filed their answers, and claim that they were minors at the time of the payments; for they were minors on the very verge of majority, and being such, their laches and delay after arriving at full age, differ but in a very slight and immaterial degree from that of the complainant, and is equally without excuse or explanation.

Now take the case of Glasgow vs. Lipse:

Moses Lipse, of Botetourt county, Va., died in Dec., 1859. His will directed all his property to be sold and the proceeds to be divided among his children, and appointed his sons, Samuel and David, his executors.

On Sept. 10th, 1860, the executors sold the real estate to Charles C. Spears, of Virginia, for $14,858.00; payable, one-third Oct. 3rd, 1860, one-third Oct. 3rd, 1861, and one-third Oct. 3rd, 1862.

Of the twelve devisees, nine resided it Virginia, and three [including David H. Lipse one of the executors] resided in Indiana. One of the Virginia devisees seems to have died after the payment of Oct., 1860, leaving six children.

The first payment [Oct. 1860] was distributed to the nine Virginia devisees, the executor [resident in Va.] retaining and charging himself with the shares of the Indiana devisees.

Before the Oct. 1861 payment became due, Spears, who was a Confederate soldier, was killed in battle, and left a will by which he appointed Glasgow his executor.

Shortly after the maturity of the Oct. 1861 bond it was paid by Glasgow in two instalments, but it does not appear in what kind of currency. The same disposition was made of this money as of the first payment, the nine resident devisees receiving their shares without objection.

When the second deferred payment became due [Oct. 1862] Glasgow offered to pay it in Confederate money which at first the resident executor of Lipse declined to take, but after a while he accepted Glasgow's check on a local Bank

for the money, declining to charge interest since Glasgow's offer to pay, because he regarded that as a good tender and the receipt of the check as an acceptance of payment as it had been previously offered by Glasgow.

This check was put to the credit of the executor of Lipse and was by him drawn out in Confederate money, and in that currency distributed to eight of the resident devisees, and to five of the six children of the ninth.

With the recipt of this money, after the cash payment in 1860, the Indiana executor had nothing to do, and the three Indiana devisees did not know of it or in any manner give their consent to it. This Indiana executor and these three Indiana devisees [the Indiana executor being also one of the three devisees] did not sue the Virginia executor, or seek to hold him liable either for their shares of the money in his hands, or for a devastavit in unnecessarily receiving the Confederate money at all.

But they did just as the complainant did in this case. Without calling that executor to account they elected to treat the payment in Confederate money as no payment at all, and so considering it they proceeded by bill in chancery against Glasgow, the executor of Spears, the purchaser of the land, to enforce the lien they claimed upon the land for purchase money which they claimed to be still unpaid.

There is a curious similarity between the language of the bill in the Lipse vs. Glasgow case and that filed by Mr. Opie in this case. It may be profitable to quote them together.

Justice Field says of the Lipse bill:

"The complainant alleging that those instalments never were paid, that Confederate notes were given in pretended payment, and were received under compulsion, with sundry charges of deceit and fraud on the part of Glasgow to carry out a scheme to obtain possession of the property without discharging the just claim of the estate thereon."

Mr. Opie says in his bill:

"The said Henry Castleman having before that time heard of the death of said Hierome L. Opie, and conceiving the idea of taking up his said bonds, which were then in the hands of said Nannie S. Opie and said Thomas, but in said Nannie's as your orator charges, by paying them with

said worthless or next to worthless Confederate money, and of practicing a great wrong and fraud not only upon said Nannie, but upon all of said children of your orator's said father, including your orator, gathering together a large amount of such Confederate notes and went * * * * that upon reaching said county of Augusta, he, the said Castleman, proceeded to carry out his wrong so conceived. By appealing to the fears of said Nannie S. and Thomas, by persuasion and with the aid of one or more persons then employed by him to aid him in the accomplishment of his purpose, he, the said Castleman, succeeded in getting said Nannie S. and said Thomas to deliver up to him all of the said single bills, and receiving therefor nothing but said worthless Confederate money, to a very large amount, that is to an amount large enough to cover the said total amount of said single bills" * * * &c.

Had we had opportunity to quote directly from the Lipse bill, instead of merely getting its substance from the Judges opinion, the similarity of expression would doubtless be more apparent.

But of the allegations of the Lipse bill upon these points the Supreme Court of Appeals said:

"None of these charges of deceit, fraud and compulsion are sustained by any evidence. On the contrary the conduct of the resident executor and of Glasgow is shown to have been that of honorable and just men; no deceit was practiced, nor any undue advantage taken by either of them."

Is it possible for this court to say less of this case, on the evidence?

We have noted that in the Lipse case one of the executors of Lipse was a resident of Indiana, and neither as executor nor as devisee ever gave his consent or countenance to the receipt of Confederate money, and that the same was true of the other two Indiana devisees.

In the Opie case both executors were residents; both participated in the receipt of the money, and all the devisees were residents, and all either gave direct consent to the receipt of the money or else received it without objection from the executors, and never complained to any one until this bill was filed about eighteen years afterwards.

In the Lipse case it was obvious at the time of the receipt of the money it would be impossible to use it, for there were no debts to pay (as is shown by the distribution of the money

to the devisees), and three of the devisees lived in Indiana; between which State and Virginia there was the impassible gulf of a flagrant war.

In the Opie case all the distributees lived in Virginia, were easily accessible, and did in fact receive without objection the money paid to the executors.

In the Lipse case the last bond was certainly paid in Confederate notes, and it is uncertain what was taken for the first deferred payment.

In the Opie case the two bonds which fell due respectively January 1st, 1861, and January 1st, 1862, were in the fall of 1862 paid in Confederate States notes, at a time when that currency had a purchasing value equal to gold. Indeed, this payment was made almost exactly at the time that the payment in the Lipse case was made, and in identically the same kind of currency.

When the payments which matured January 1st, 1863, and January 1st, 1864, respectively, became due, they were, upon the express demand of the personal representatives of Mr. Opie, paid in Virginia Bank notes, which had been the recognized currency of the country from time immemorial; the issue of which had nothing to do with the political disturbances of the country, and which had a money value even after the war ended and the Confederacy was overthrown. Indeed, some of those Bank notes (the Bank of Winchester, for instance,) were worth par after the war ended.

It appears, therefore, in the plainly proven facts of the case, that the Lipse case was in all respects much stronger for the complainant than is this Opie case.

And yet the Supreme Court of Appeals, reversing the lower court, declared the complainant entitled to nothing as against the purchaser of the land, and very strongly intimates that by reason of his fourteen (nearly eighteen in this case) years delay he is not entitled to recover against the resident executor, who, without the concurrence of his colleague, and when it was impossible to distribute to the Indiana devisees, assumed the responsibility of receiving

Confederate money in payment of an ante-war debt. Of that Lipse case the Supreme Court said:

"It falls within the class where, for debts payable in lawful money, the depreciated currency where they were contracted and the executor resides can be used at its face value in payment of legacies, and, therefore, may be accepted by him without a breach of trust. The notes received, had in October, 1862, to a great extent, superseded the use of coin, and become the principal currency of the Confederate States. All business transactions were had with reference to them. They were a standard of value, according to which contracts were made and discharged. Having therefore, an exchangeable value, they were sought for by residents within the Confederacy. The resident executor there, however, hesitated to accept them in payment of the last bond of Spears, which, being made in October, 1860, must be considered as payable in lawful money, and he consulted the wishes of legatees in Virginia, among whom the greater part of the money was to be distributed. They desired him to take the notes and received them in discharge of their distributive shares. So far as these legatees are concerned, their approval of his action was shown by their expressed wishes, and their acceptance of the notes. They, at least, are estopped from questioning the propriety of his conduct."

Could language be more applicable to this complainant? He was present at the Confederate money payment; helped to count the money and received his share of it. He himself says he knew of the other payments shortly after they were made; received his share of them; used the money and rested near eighteen years before he sued Mr. Castleman.

But what has been quoted above can, of course, have no reference to the non-resident executor, and the non-resident devisees. He did not unite in the receipt of the Confederate money; they did not consent to its payment in a depreciated currency, nor in fact was it possible to have sent the money to them.

As to the non-resident Executor the court says:

"It is a sufficient defence to the present suit that the entire purchase money for the land was paid, for it is upon the alleged non-payment of the last two instalments that the suit rests. He had full authority to collect them, and it was not necessary that his co-executor should join in the receipts. Edmonds vs. Crenshaw 14 Pet. 166. If the deed did not pass the title, a Court of Equity would, after such payment, compel those holding the legal title to execute a sufficient deed."

In the Case at Bar, both Executors and the Trustee united in a Release of the Deed of Trust; and the whole transaction being complete, the purchaser is asking no favours, and no relief from the Court of Equity.

Now, finally, as to the non-resident legatees, (to whom perhaps these well-grown minors in this case may be likened,) who did not and could not have consented, actually or constructively, to the receipt of the depreciated currency, and who did not receive any part of the same, or indeed their shares of the estate in any kind of currency or money whatever.

"As to the rights of the legatees, including the co-executor residing in Indiana, only a word need be said. If they have just ground to complain of the resident executor, and their rights can at this date be judicially enforced, they must proceed by suit against his representatives, or excepting the co-executor, against his sureties. Morrow vs. Peyton, 8 Leigh 54; Lidderdale vs. Robinson 2 Brock 160. When such suit is brought it will be time enough to consider how far the settlement of his accounts can be impeached, and how far any remedy is affected by alleged laches. At present these questions require no answer."

Mr. Castleman's Liability is only Secondary—That is, he can only be held Liable through the Admr's., on the theory that they have been guilty of a Devastavit, in which he participated.

It may be true that a debtor to a decedent's estate may be held to a re-payment of the debt if he colluded with the personal representative, or if he perpetrated a fraud. In other words, he must be guilty of bad faith. In this case, as I have shown, there is an utter absence of bad faith. But even if the court can detect evidence of collusion, upon what principle can Castleman be held liable? His liability is not to the party with whom he may have colluded—they will not be heard to proclaim their own fraud, nor will they be permitted to profit by it. His liability in such a case would be to the party injured by the fraud—not primarily but secondarily. The personal representatives would be first liable,

and in default of their ability to pay, the debtor might be called upon in relief of an innocent surety, but this is a liability occurring through the fiduciary. In other words, the fiduciary had the right to surrender the bonds without payment at all, and as between him and the debtor the transaction would stand, but might not be good as against a creditor, a surety or a distributee. In such a case, however, the debtor would stand in the relation of a surety for the fiduciary who would be first liable. Now if the fiduciary is released, does not that work the release of the debtor? In the bill not only is there no prayer for relief against the personal representatives—not even a prayer for a settlement of their accounts—but almost in terms they are released from all liability, and it is submitted that this operates to release Castleman. The debtor, Castleman, in this case, who paid the money, stands in a much better position than the administrators who received it. They were in a position to know the condition of the estate which they represented—they knew its necessity and the demands upon it—they knew whether there were debts that could be discharged in Confederate money, or if there were no debts, whether the money could be used in distribution. Mr. Castleman, on the other hand, did not and could not know these things, nor was he bound to inquire. The relative position of the debtor and the personal representative, in such a case, has been the subject of judicial discussion and decision in Virginia, and it has been held that it is not in every case that a party who pays a debt in depreciated currency will be held to a repayment when the fiduciary, in receiving such currency, may be guilty of a devastavit, for, says Judge Christian in the case of Tosh vs. Robertson, 27 Gratt., p. 278—

"There may be cases where the collection of a debt in a depreciated currency would be a devastavit in an executor, and yet no liability is fixed upon the party who pays the debt. He, the debtor, does not know and generally is not bound to inquire what may be the necessities of the estate. For aught he knows, the debt which he pays may pay a debt due from the estate, or pay a legacy which a legatee may be willing to receive in a depreciated currency."

In other words, the debtor's liability is to be measured and governed by his KNOWLEDGE at the time he pays the debt, and this record does not show that Castleman had any knowledge of the condition of the estate. We insist, therefore, that if Mr. Castleman is liable at all, it is only upon the ground that the administrators were guilty of a devastavit in receiving Confederate money, and that he KNEW of, and contributed to it, and, in any event, they are liable in his relief, and if they are released he is released.

We confidently ask a reversal of the decree of the court below.

BARTON & BOYD,
MARSHALL McCORMICK,
Counsel for Appellant.

Office Supreme Court U. S.
FILED.
APR 7 1892
JAMES H. McKENNEY,
CLERK.

IN THE

SUPREME COURT OF THE UNITED STATES.

Appeal from District Court for the District of West Virginia.

S. W. WASHINGTON, Administrator of HENRY W. CASTLEMAN, Apellant,

vs.

H. L. OPIE, ET AL., Appellees.

ROBERT WHITE, Counsel for R. L. OPIE, the Plaintiff below, and for JOHN N. OPIE and MARY MEADE, two of the Defendants below.

WHEELING:
DAILY INTELLIGENCER STEAM BOOK AND JOB PRESS.
1892.

IN THE

Supreme Court of the United States

Appeal from District Court for the District of West Virginia.

S. W. WASHINGTON, administrator of HENRY W. CASTLEMAN, *Appellant.*

vs.

H. L. OPIE, ET AL., *Appellees.*

ROBERT WHITE, Counsel for H. L. OPIE, the plaintiff below, and for JOHN N. OPIE and MARY MEADE, two of the defendants below.

STATEMENT OF FACTS.

The facts in this cause, fairly deducible from the record, are substantially as follows:

Hirome L. Opie, the father of the plaintiff and of said John and Mary, sold, in the year 1856, to Henry W. Castleman a magnificent farm in the county of Jefferson, Virginia, (now West Virginia,) taking Castleman's bonds for the deferred payments, secured by a deed of trust duly recorded and constituting a lien upon the land. Mr. Opie removed to Augusta county, Virginia, where he resided until the time of his death, which occurred in June 1862.

When Mr. Opie died, there was unpaid of said purchase money so secured by said deed of trust, four bonds, each for the sum of $3,622.27 with interest from January 1st, 1861, and payable respectively, one on the first day of

January 1861, one on the first day of January 1862, one on the first day of January 1863, and the last on the first day of January 1864.

Administration upon the estate of Mr. Opie was taken by his widow and son Thomas, in the County Court of said county of Augusta, in Virginia, in the month of November 1862. The war had progressed from early in 1861, and when the payments hereinafter referred to were made, the Confederate armies had full and complete military control of the county of Augusta, and the Federal armies had, practically, the military control of the county of Jefferson, where Mr. Castleman resided. It was over 100 miles from the home of Castleman to Staunton, in Augusta county, where the personal representatives of Mr. Opie resided.

In June 1863, West Virginia was admitted into the Union as a State, the county of Jefferson being within the new State.

Very shortly after the appointment of Mrs. Opie, as administratrix of her husband's estate, and during "*that fall*" and before his January 1, 1863, bond fell due, Castleman, knowing that his bonds which had fallen due on the 1st day of January 1861, and 1st day of January 1862, with their accrued interest had not been either paid or tendered to Mr. Opie in his life time, and knowing that another bond would fall due on the 1st day of January, following, speedily gathered together—chiefly by a sale for Confederate money of part of this very land to one Myers—a very large sum of Confederate money, to use "in the payment of said bonds," (see Castleman's dep. p. 41 of record) and in order to have enough to pay off both bonds, and all the interest due and unpaid, in depreciated currency, whilst it was in circulation and taken by adherents to the Confederacy, borrowed a small amount of "Old Virginia bank notes" from his friend, Col. Morgan, and being thus prepared, went during the war, from his home in the said county of Jefferson over one hundred miles to the county of Augusta, then under full control of the Confederate government and its military, carrying the money with him, for, as he says in his answer, (record p. 23) "*the purpose of paying off his two single bills,*"

to Mrs. Opie, the administratrix and a fiduciary. He then and there paid the said single bills and their accrued interest to Mrs. Opie, with the money he took with him. This was late in the fall of the year 1862, very soon after the administration in November 1862. He not only did this, but with "an eye to the future," he, as he says in his own words, (see his dep. near bottom of p. 41 of the record,) "asked them the question whether he should go home and make sale of his crops to make ready to pay the next bond. I also asked them whether *they would be willing to take it in Confederate money.*" He went back to Jefferson, sold his crops speedily for Confederate money, prepared for another trip to Augusta, to pay with the same kind of currency the bond due the 1st of January following. But before he succeeded in thus paying, he learned, (how does not appear,) that the administrators would take no more Confederate money, and at once, in his anxiety to pay, set about to borrow from E. I. Smith enough of "various old Virginia bank currency accumulated by Mr. Smith before and at the beginning of the war," (see Smith's dep. p. 39 of record), to pay off the single bill which fell due 1st January 1863, and all its accrued interest, and before the 1st of February, following, had sent it to Augusta county, by Mr. Lewis, who paid it to the fiduciary.

At the time of these payments Confederate money was certainly much depreciated, as well, too, as "old Virginia bank notes," which, as the history of the times fully testifies, kept somewhat on a par with the notes of the Confederacy in their downward tendency, as the war progressed. The fact that Castleman was so anxious to pay in depreciated currency; the fact that he asked the administrators whether they would be willing to take Confederate money; the fact that they so soon declined to take it, all sustain the plaintiff, who testifies that it had depreciated one-third below a par standard. Indeed, it had depreciated more than that, for in the case of *Dearing's Administrator vs. Rucker*, 18 Gratt. 428 the Virginia Court of Appeals, recognizes the fact that such currency had depreciated at least 66 per cent before the 1st of January 1863. Mr. Matthews, in his book of Virginia Forms, p. 308 gives the following table:

CONFEDERATE MONEY.

The following table shows the value of Confederate money in gold, in Richmond during the successive months of the war:

	1861	1862	1863	1864	1865
January	.....	$1.20 to 1.25	3	20 to 20¾	45 to 60
February	.....	1.25	4	22½ to 25	45 to 65
March	.....	1.30	5	23 to 24	70 to 60
April	.....	1.40	5½	22 to 23	60
May	$ 1.10	1.50	5¼ to 5¾	18 to 19	.....
June	1.10	1.50	7½ to 8	17 to 19	.....
July	1.10	1.50	9	20 to 23	.....
August	1.10	1.50	12½ to 13	22½ to 25	.....
September	1.10	1.75 to 2.50	13	22½ to 27½	.....
October	1.12 to 1.15	1.75 to 2.50	14	26 to 27	.....
November	1.15	1.90 to 3.00	15 to 17	27½ to 33½	.....
December	1 20	2.00 to 3.00	18 to 20	34 to 49	.....

The other and last bond did not become due until January 1st, 1864, at which time Confederate money was so depreciated as that twenty dollars of it had not a purchasing capacity of one good dollar, (see table referred to.) Mr. Castleman was again ready with his "old Virginia bank notes," which it is not even claimed were not likewise depreciated, and within four days after that bond fell due, he had sent it to Staunton by the hands of a Mr. Sinclair, who paid it to Mrs. Opie, and received an order directing Robert Y. Conrad, the trustee in said deed of trust, who resided at Winchester, to release the same.

When these payments were so made, both John Opie and Mary Meade were infants, under twenty-one years of age, John then being between seventeen and eighteen years old, and Mary between eighteen and nineteen. The plaintiff was in the army during the whole war.

In 1865 Castleman obtained the release of the trust from Mr. Conrad the trustee, and held it without having it admitted to record until 1871. Not until this time could any of the children of Mr. Opie be supposed to have even constructive notice of this release, and the plaintiff *never had notice in fact of it* until the summer of the year 1880, a short time before this suit was instituted.

Soon after the close of the war, Mrs. Opie, the adminis-

tratrix and Thomas, the administrator, removed from Augusta county to the city of Baltimore, in Maryland, and took with them all the papers connected with Mr. Opie's estate, without, so far as appears, making known its condition to the children, and without even attempting to make a settlement or render an account as such fiduciaries, as the law required them to do. The estate of Mr. Opie was not indebted. The fiduciaries put the Confederate money which was received from Castleman into Confederate bonds, and it seems retained the "old Virginia bank notes," or at least some of them, until after the war; they were worthless to the estate, for all the old Virginia banks were utterly ruined by the war, and thus it was that Mr. Opie's heirs were poor and Castleman had their father's farm.

In 1873 the plaintiff removed to the State of Kentucky, a poor man indeed. He still resides there. He testifies that he never, in fact, knew of the said release until the month of July 1880, and this suit was instituted on the 4th day of the following December, and as soon, as plaintiff testifies, as he was able to give the security required under the practice of the court.

These are the main facts of the case, which chiefly appear by the answer and deposition of Castleman himself.

Have these children been wronged and suffered? If so, a court of Equity will see that "that such a wrong is righted."

We insist that all these payments in Confederate money, and depreciated "old Virginia bank notes" to the fiduciaries, were illegal and void, and not payments at all of the debts to the estate of Mr. Opie: that a fiduciary or trustee has no authority or excuse to take depreciated currency in payment of debts due to an estate, unless the estate is thereby benefitted. And we insist that the said deed of release should be set aside, the lien of the deed of trust should be enforced for the benefit of the children of Mr. Opie, and that they should be put in as good condition as they would have been had not these pretended payments been made by Castleman.

In considering this cause it should be borne in mind that

these alleged payments were made to *fiduciaries, trustees, and not Mr. Opie*, the elder, with whom the contract was made, and not to the children of Mr. Opie, to whom, in fact belonged the said bonds of Castleman.

THE LAW APPLICABLE.

Ward vs. *Smith*, 7 Wall., 447. In this case the bonds were ordinary bonds for the payment of money, (not stating what kind of money) at the office of discount and deposit of the Farmers' Bank of Virginia, at Alexandria. The owner of the bonds went into the Confederate army, and left one of the bonds at the said bank, which was there paid by the debtor in various "old Virginia bank notes." This Court held: that the bank was the agent of the owner and that payment in "*old Virginia bank notes*," *to the bank, was no payment at all.* Mr. Justice Field, on p. 451, says: "When the instrument is lodged with the bank for collection, the bank becomes the agent of the payee or obligee to receive payment, the agency extends no further, and without special authority an agent can only receive payment of the debt due his principal in legal currency of the country, or in bills which pass as money at their par value by the common consent of the community." In that case the payment in Virginia bank notes were made in 1861 and 1862, and Justice Field proceeds to say, "but even as agent of the payee of the first bond the bank was not authorized to receive in its payment depreciated notes of the banks of Virginia; *the fact that those notes constituted the principal currency in which the ordinary transactions of business were conducted in Alexandria, cannot alter the law.* The notes were not a legal tender for the debt, nor could they be sold for the amount due in legal currency. The doctrine that bank notes are legal tender unless objected to at the time, on the ground that they are not money, only applies to current bills, which are redeemed at the counter of the bank upon presentation and pass at par value in business transactions; notes not thus current at their par value, not redeemable on presentation, are not good tender to principal or agent, whether they are objected to at the time or not." If this be law, how can these pretended payments of Confederate

money late in the year 1862, and of "old Virginia bank notes" early in 1863, and again, in January 1864, made to a fiduciary, and not needed or used, or pretended to be used for the benefit of the estate, be treated as payments binding upon these children of Mr. Opie? If the payments had been made to Mr. Opie personally the case might have been different.

In *Horn* vs. *Lockhart*, 17 Wall., 579. An executor had sold the property of his testator, and received therefor Confederate money, which he invested in Confederate bonds, and settled his accounts in the State Probate Court. Yet he was held to account to the heirs.

Counsel below sought to avoid the effect of this case claiming that the executor had invested the money in Confederate bonds, which were issued to "raise funds to aid the rebellion." But is it not true that Confederate money was issued for the very same purpose? In the case referred to, this Court did not hold that payment to an executor, with whom the contract of sale was made, of a debt, in Confederate money was even a good payment, but has held, as will hereafter appear, otherwise. This Court has never held that where the contract was made with a party, a payment made after his death to a fiduciary in such depreciated currency would be a good payment.

In *Fretz* vs. *Stover*, 22 Wall., 198. Stover's bond had been left with Chilton for collection, (see pp. 204, 205,). In *December* 1862, Stover paid Chilton the amount of said bond "not wholly in notes of the Confederate States, but partly in them and partly in notes of banks" and "the bond and all the notes, of course, becoming worthless with the fall of the Confederacy itself" this Court held that "such payment was no payment at all" and further said that the note was executed with reference to the standard value existing at the time of its execution in the United States, (p. 205). And on page 207, this language is used; "If Chilton could not receive payment on the bond in Confederate paper and Virginia bank notes, neither had Stover the right to pay them. It was a

void act on his part to attempt to discharge his debt in this way, *as well as a fraud in Chilton to suffer him to do so.*" Chilton was a mere agent in that case. How much greater was the wrong in the fiduciaries of the estate of Mr. Opie to permit Castleman to pay off his bonds with the currency and in the way he did pay them? In the case last referred to, the Justice delivering the opinion, uses this language: "His (Stover's) obligation when the bond fell due was to pay it in legal currency of the United States, and yet he tries to discharge it in paper worthless to Fretz." Is this not true here?

Again, in the case referred to, the Court says, on p. 207: "It is claimed that Virginia bank notes should be treated as payment *pro-tanto*, but, as we are advised, the difference between their market value and that of Confederate bonds and notes was merely nominal during the war, and when it ended the bank notes were worthless, being only secured by Confederate bonds."

The next case before this Court was that of *McBurnie* vs. *Carson*, 9 Otto, (99 U. S.) 567, an important case, and one which, I think, sustains the prayer of the plaintiffs bill. It had been before this Court before, in 19 Wall., 94, and was reversed because of want of proper parties. Judge Chase had decided it below, giving, *upon the merits*, his opinion in favor of the plaintiff, to which I will refer to more fully hereafter.

The facts are stated in 9, Otto, p. 568, and are substantially as follows, viz:

Carson died in August 1856, leaving a widow and two minor sons. He left a plantation, "Dean Hall." He made a will appointing Robertson and Blaclock his executors, and directed his estate to be sold, the proceeds to be held in three parts, the interest on one-third to be paid to his widow, and on the other two-thirds to be devoted to the education and support of his two sons, until they became of age, and then the principal to be turned over to them.

The executors, after Carson's death, sold the real estate to Bail, and took his bonds and a mortgage for a part of the purchase money.

During the war, in 1863, Ball sold the property to Hyatt, McBurney & Co., a firm consisting of Hyatt, McBurney, Gillespie, Hazeltine and McGhan. The conveyance was made to Gillespie and McBurney. The firm paid Ball in Confederate money, and with Confederate money Ball *paid Robertson, one of the executors*, with whom he had contracted, the amount of the deferred purchase money bonds, and discharged the mortgage. The two sons arriving at age, transferred their interest to their mother, and she filed her bill to set aside the cancellation of the mortgage, and enforce the payment of the debt owing by Ball.

It will be noted that in this case Ball, the purchaser, conveyed the property to McBurney, etc. Robertson did not convey as executor, for he had before that conveyed to Ball, (see 19 Wall., p. 95, at the bottom of page). As far as it appears, from either report of the case, Robertson had nothing to do with the sale by Ball to McBurney, etc., *he only received the Confederate money from Ball and released the mortgage and gave up Ball's bonds.*

It will also be seen that these deferred bonds were simply for the payment of certain amounts in the usual form of bonds, (without mentioning that they were to be paid in "lawful money" or otherwise than as usual in bonds).

Judge Chase below held (see 19 Wall., p. 98), upon the merits, "That the surrender of the bonds of E. N. Ball by Robertson, the executor, and the satisfaction of the mortgage of "Dean Hall," were done in breach of his duty as *trustee*, and were null and void; that the mortgage of "Dean Hall" was a valid and existing mortgage, and that the complainant was entitled to the bonds and to enforce the mortgage as a security for the same."

Now I ask why is not the surrender of Mrs. Opie of the bonds of Castleman and the release of Castleman's mortgage a breach of her duty as trustee, and why cannot the heirs, in this case enforce the mortgage as well as in that case?

Justice Swayne in reviewing, in 99 U. S., p. 570 and 571, says the executors sold the property in 1857, and took a mortgage. "The property was valuable, and the amount due was well secured. The debt was payable in lawful money of the United States, and the executors had no right to take any-

thing in payment but such money or its equivalent." The Judge went on to say "McBurney and Carsons thus changed places, the former still holds the broad acres, while the latter lost every dollar of the investment, so well secured at the outset upon the property." "There was evidently a plot. McBurney, etc., were the contrivers; Ball, the instrument; Robertson was their dupe; and the Carsons were their victims." Robertson, the Court says, was only the dupe. So it is in our case, the fiduciaries, Mrs. Opie and Thomas, then in the South, feeling their allegiance due to the Confederacy were no less dupes than was Robertson. Is it not true in this case, that Castleman, who took so much pains to get Confederate money to such a large amount together in 1862, and to borrow "Virginia bank notes," and to go to Staunton for the purpose of paying *in such currency* his bonds which were so well secured for Mr. Opie's children, and to borrow and to get together Virginia bank paper, and to send it 115 miles in time of war, to pay his other two bonds, was *contriving* to pay off his well secured debt *in such currency*. Is it not true that he used his friends, Smith, Logan, Lewis, Sinclair to assist and aid him in carrying out his purpose, and is it not true that the children of Mr. Opie, two of whom were infants, were the sufferers and victims, and Castleman holds the broad and valuable acres?

Thus, in our case, it is not only the fraud of the trustees, in permitting the payment by Castleman such as is described in the case of *Fretz* vs. *Stover*, but like the *McBurney* case, there was *actual contriving and purpose* upon the part of Castleman in time of war *to get rid thus of his honest debt*, which was well secured by Mr. Opie the elder, in his life time, for the benefit of his children.

In the McBurney case, as in our case, there was such contriving, as constituted fraud, but even if there had not been the Court says that it would not have hesitated as to what the judgment would be, for "*In its strict legal aspect it is equally free from doubt*" (see p. 571.) *Why? Because the payment was made in Confederate money.*

Indeed our case is stronger than the McBurney case. There the payment was made to the executor who sold the land. In our case, *Mr. Opie sold the land and took the bonds, and*

trustees and fiduciaries of the estate, (NOT HE) *undertook to release the good security he took by the receipt of such money as they did take.*

Counsel below insisted that this Court, in deciding the case of *Glascow* vs. *Lipse*, 117 U. S. 327, has receded from the positions taken in the cases before referred to, but a careful analysis of that case shows that that case too sustains our position. Counsel below called special attention to the language of the bill in the *Glascow* vs. *Lipse* case, and the language in this case, and sought to make some capital therefrom. It is evident that the counsel in the *Glascow* case framed his bill somewhat after the bill in the case of *Mc Burney* vs. *Carson*, seeking to allege a state of facts as to "payments in Confederate money" such as were given in that case, as well too as facts which had been held in *Fretz* vs. *Stover* to constitute legal fraud; but the trouble of the plaintiff was, that *he failed to prove his facts.*

In *Glascow* vs. *Lipse*, the facts were substantially as follows, viz: Lipse died in Virginia before the war, leaving several children: David, who resided in Indiana; Samuel, who resided in Virginia. These two children were his executors, empowered by his will to sell his real estate. In 1860 both the executors agreed to convey to one Spears a tract of the testator's land upon the payment of a bond given by Spears therefor, payable in the year 1862. David, one of the executors, continued to reside in Indiana, during the war, and Samuel, the other executor in Virginia. Spears paid his bond to Samuel, after its maturity, in Confederate money, and Samuel settled his accounts with the proper Court showing that he had received this money and how he had divided it. Samuel afterwards died; and then David brought this suit against Spears, to recover the sum alleged due upon the said bond.

I call attention to the facts:

1. That the said suit was brought by David, the surviving executor, against Spears' estate, to recover the amount of the bond.

2. That the heirs were not parties, and the court could not and did not, in that suit, undertake to dispose of their rights or interests.

3. That the only and sole question decided in that suit, was whether the payment, by Spears, to Samuel, *at* the place, *where the contract was made*, and where *both* Samuel and Spears *resided*, a payment made by Spears to the *very party with whom he had contracted*, was a good payment or not. All other questions were eliminated from the case, for so far as any charges were made in the bill, which would have constituted fraud, or such as have been proven in our case, the Court distinctly say that they *were not proven*, and as clearly intimate that, *if* they had been proven the deed would have been *set aside*. In other words, suppose that it had been shown that Spears owed this money originally to Moses Lipse, the father, and that he gathered together thousands of dollars in depreciated money, and carried it over one hundred miles, during war, into the place where Samuel lived, for the purpose of paying a note well secured for the children, to an *executor*, *who had not* made the contract with him; an executor who did *not need* such money for the *use* of the estate, a mere trustee of the bonds, an executor who could not and did not, either pay legacies or debts, or attempt to distribute it among the heirs at law, I ask would not the Court have held, as it did in the case of *Fretz* vs. *Stover*, 22 Wall., 207, that it would have been a *void act* in Spears to attempt to pay his debt in that way, and a *fraud in the fiduciary to have suffered him* to do it? Justice Field would never have held one doctrine in *Ward* vs. *Smith*, 7 Wall., 447, which was repeated in the other cases I have referred to, and then gone back on himself and this Court in the case of *Glascow* vs. *Lipse*.

Upon the question as to whether the payments to Samuel, with whom the contract was made, was a good payment, what a great difference is there between the Glascow case and our case? In *that* case: the payment was made to the party *with whom* the contract to pay was made; it was made in the county, in the same State, where both parties to the contract resided, and where the contract was made. Nine, out of the twelve legatees, requested its payment and received the Confederate money as and for their shares of the legacies. It was made in money current for the payment of debts there; it was collected for the *purpose of distribution*

or payment of legacies, and so received by nine of the legatees; there were *no inducements* held out by the debtor; there were *no minor children*; there was no representation as to the kind of currency the check would be paid in; there was nothing that tinctured the matter with a legal or other fraud or wrong, or with a purpose to get some advantage. Nine of the legatees took the Confederate money, with which the bank paid the checks upon it. The other three legatees were not parties to the suit, their shares *remained charged* to the resident executor, in his accounts (see p. 331) and nothing was decided with reference to them. But the Court clearly intimates so far as they were concerned, that if they had sued, the Court would have held that the payment as to them, was not a good payment to the executor, and as to them, the executor had no right to receive such money, even under such circumstances. (See the remarks of the Court upon page 336).

How different our case? Here; the payment was *not made* to Mr. Opie, *with whom* the contract was made and who took good security for the debt, the deed of trust, but it was made, after his death, to the personal representative of his estate; *a mere fiduciary or trustee*. It was not made with the consent of the plaintiff, or of either Mary Meade or John Opie, both of whom were mere children, and to whom it could not have been paid, because so young. It was not requested to be collected. It was not paid over to anybody. It was *not needed* to pay debts or legacies; and *was not so used*. The Confederate money was held and invested in Confederate bonds, and so lost; the Virginia money was held in kind until after the war, and some of it was given to the children, and other of it *was sent back* to *Castleman* in a letter and kept by him and nothing said about it by him. Neither the Confederate money or the Virginia bank notes were circulated in the community, or did anybody any good, for as I have said the Confederate money went into Confederate bonds, *as in the Horn & Lockhart case*, and the Virginia money was held until after the war. Besides all this the debt was well secured. Castleman, according to his own admissions, gathered together the large amount in the latter part of 1862, to pay a debt due in January, 1861, and its in-

terest, and another due in January, 1862, and its interest. Castleman never attempted to pay this indebtedness, so long due to Mr. Opie in his life time and not *until he had gathered* enough of the Confederate money, and borrowed a small amount of Virginia money from Col. Morgan, *and then, as soon as he got ready* to pay this debt with depreciated money and not till then, he mounted his horse and rode in time of war, from out of what was known as territory occupied as Union territory, from his own home, over 100 miles into territory, which was entirely occupied by the Confederates, and there, *in Confederate territory*, he paid over to a woman, fiduciary, loyal, and so known to him, to the Confederate cause, the amount of his then two long matured bonds; took them up, and went home rejoicing (who doubts it,) in the accomplishments of his purpose and scheme. It was but a *few weeks* until his next bond was due, in January following. He got the consent of the fiduciary to pay it in Confederate money; was *careful then and there* to get that consent. He went home to raise Confederate money for that purpose, but in the meantime he heard that the fiduciary, (who doubtless had been advised so, or perhaps the protests of the plaintiff, of which he speaks in his deposition, might have moved her) would not take Confederate money. Then he was quick *to borrow* the depreciated Virginia bank notes and hurry them by the hands of a friend to the fiduciary, to get up his bond then due. And then, when the last note became due in January, 1864, when Confederate money was not worth more than five cents on the dollar, and when Virginia bank notes, the banks crippled and destroyed by war, were likewise depreciated, he took care to gather it together, and within four days after his last note fell due, have it at Staunton, turned over to the administratrix, demanding and receiving an order to the trustee to release the deed of trust, caring not to tell the Court how much this depreciated currency cost him, as he cared not how much innocent children would suffer by the wrong. Thus the difference in the two cases appears.

In our case the design and purpose of Castleman is shown by his own answer and deposition, and the depositions of his own witnesses. We have shown that such payment was not "payment in fact or in law" and when suffered by a

trustee was fraud in itself. We have shown Castleman, at home, after Mr. Opie's death, arranging to despoil the estate of Mr. Opie's children, and how he succeeded in doing so by paying to a Confederate widow and officer, the fiduciaries, his debt in the currency so depreciated.

The decision in the case of *Glascow* vs. *Lipse*, was based upon a state of facts proven in the case, which brought that case within that class of cases where (I quote from the case p. 334,) "for debts payable in lawful money, the depreciated currency of the country where they were contracted and the executor resides can be used at its face value in payment of legacies, and, therefore, may be accepted by him without breach of trust." Our case belongs to that class spoken of on the same page, in which the debtor formed a purpose to pay an executor in depreciated currency, and where the currency was not needed for, or used or attempted to be used for, the payment of legacies or debts or other uses of the estate, and the safety of the debt did not require its collection: a case in which the executor may be charged as a participant in the *devastavit*.

Justice Field, in the *Glascow* case, on page 333, says that an executor "cannot call in good investments when the money is not needed, nor accept the payment of debts for less than their face when the full amount can be recovered without unnecessary delay and expense, nor in depreciated currency when better currency can be had, unless it can be advantageously used in meeting expenses, discharging debts, paying legacies and the like." In our case, be it remembered, a debt well secured by a deed of trust, was received in depreciated currency, and that is not all, the Confederate money was placed or funded in useless Confederate bonds, and the "old Virginia bank notes" were of no value to the children whatever.

The case of *Alley* vs. *Rogers*, 19 Gratt., 366, is one in point. In that case the debtor gave his note payable at a Virginia bank, the creditor lived and continued to reside in Kentucky, a deed of trust was given to secure the debt; the debtor paid the debt during the war in Confederate money.

The Court held the payment to be "no payment," and enforced the deed of trust as against purchasers of the land.

The West Virginia cases are to the same effect.

Harper vs. *Harvey*, 4 W. Va., 539: Held that a payment to an attorney, in Confederate money, without authority to receive it, was not a payment.

Copeland vs. *McCue*, 4 W. Va., 264. Executor lent out money before the war, (a legacy); received payment during the war in Confederate money, and invested it, at the instance of his counsel, in Confederate bonds. Held that he was not entitled to relief.

Hix vs. *Hix*, a late case, 24 W. Va., 595. "When an administrator, during the war, collected an anti-war debt due the estate by solvent parties, and did not pay it out, when he might have done so, he is chargeable for the full amount of such debt and is not entitled to have it scaled."

There is no claim that either Mary or John ever consented to the receipt of the depreciated currency by the fiduciaries, nor could there be such a claim, they both deny it in their answers, and they were, both of them, minors at the time.

But it was insisted in the argument below that the plaintiff not only consented to the payment, and also ratified it, but that he actually was present at the time of the payment of the Confederate money, late in the year 1862, and endorsed the payments upon the notes. I submit that the plaintiff was clearly right in his denial of any such state of facts. He says he was "absent in the army" and did not know who was then present. Castleman, in his answer, *specially reserved the right to file these very notes in the cause, yet he took good care never to do it.* His deposition was taken after that of the plaintiff, and when he testified upon this subject he could have, if it had been true, then and there produced the notes, if so endorsed, and the handwriting of the plaintiff would have been there to condemn him. Castleman, as well as his counsel knew that Mrs. Opie and Thomas had not testified. He was amply able to take their

depositions and, if it had been true, proven the presence and consent of the plaintiff, yet he made not an effort, nor gave not an excuse, for not taking either their testimony or that of the attorney Mr. Bell, or of any other person upon the subject. Much depended upon proof of consent. It could have been easily proven, if it had existed in fact. Under a severe cross examination the plaintiff did say that he might have given some sort of consent to his mother under protest, but if he did he could not recollect it, yet, I submit, that these expressions in plaintiff's cross examination cannot be held to be admissions, but are rather a proof of honesty of purpose or a fear of saying something which might be untrue, or desire not to say anything which was not strictly true, and which might possibly have taken place and could not be recalled by him at the time of testifying. Castleman's counsel rest their claim in this regard upon Castleman's bald statement, without any corroboration, and and which if true, could not only have been proven by living witnesses, but by the production of the handwriting of the plaintiff, which he claimed to have in his own possession.

It has not been claimed that the receipt of the "old Virginia bank notes" in 1863 and 1864, was consented to. The plaintiff, in his testimony, said something about "some of the Virginia bank notes being kept by the administrators until after the war and then divided among some of the children, though they were utterly worthless." It will not be overlooked that in this connection the witness said, and it never was denied, that "quite a number of these bank notes were sent to Castleman in a letter."

This is the proof of "ratification" which is relied upon by Castleman's counsel. A family broken up; the administrators being about to remove to Baltimore, in another State, have a lot of worthless "old Virginia bank notes" on hand; they hand them, or some of them, to some of the children; a large number they send to Castleman in a letter; they ask and take no receipt for them; they account for them in no way; they were relics of the war; and those received by Castleman in the letter were two fold relics to him. Castleman's deposition was taken after that of the plaintiff; the question of ratification was an important one

in the cause, yet Castleman no where denies the statement that these "relics" were sent to him. Surely there is no proof of ratification in this cause.

ALLEGED LACHES.

The facts connected with the alleged claim of Laches, are these, as gathered from the record:

Mr. Opie, the elder, sold to Castleman the valuable Jefferson county farm, for the consideration of $41,733.66; and moved to Augusta county, about 115 miles from the farm. Castleman had, before the war, paid over $27,000, besides the interest, leaving unpaid, on the 1st of January 1861, a little over $14,000, being the deferred purchase money bonds, due respectively, 1st January 1861; 1st January 1862; 1st January 1863, and 1st January 1864; more than trebly secured by the deed of trust upon the farm, which Castleman had given to secure them. Mr. Opie died, in the summer of 1862, during the war, and no effort had been made by Castleman to pay him any part of said bonds or their interest.

Mr. Opie's widow and his son, Thomas, qualified, in the month of November, following, at Staunton, in said county of Augusta, as the personal representatives of his estate; *that same fall*, Castleman having purposely gathered together the depreciated currency, went with it, *during war*, over 100 miles into Augusta county, then entirely under control of the Confederate military, and paid it over to Mrs. Opie, the administratrix, and whilst there tried to make arrangements to pay off the next bond with like currency. Before the next bond was paid, however, having ascertained that Mrs. Opie would decline to take any more Confederate money, he prepared himself by borrowing "old Virginia bank notes" to pay off that bond, and again in January 1864, he was ready with like currency and sent it to Staunton, and then got the release spoken of. The plaintiff was in the war; the children, John and Mary, were minors. It is not attempted to show that John and Mary knew anything of those payments; nor, is it intimated that the plaintiff knew of the two last. The Confederate money was invested in Confederate bonds, and the "old Virginia depreciated currency" became utterly worthless; none of it was

used or needed for the benefit of the estate. The fiduciaries never attempted to make any settlements of their accounts; they, soon after the war, removed to another State, taking all the papers of the estate with them; so far as known none of the heirs ever knew or heard of the order of release, or, the release of the deed of trust, until the plaintiff heard of it in 1880, only a few months before suit was instituted. None of them were residents of West Virginia, and even if they had been, could not have been charged with even constructive notice of said release until 1871, when Castleman had it admitted to record. They were all poor; not able to prosecute suits then. The plaintiff removed to the State of Kentucky in 1873, and doubtless tells the truth when he says that he was unable even to give security upon a bond for costs required by the practice of the District Court, of the District of West Virginia, even if he had known of the release, and of the delivery up by the fiduciaries of said bonds.

When the suit was instituted all the parties to the original transactions were alive and lived for years afterwards; the debts were amply secured without interfering with the rights of third parties; the evidence could all be had, none of it was lost; there was no complication as to the testimony, and no difficulty to produce all that could throw light upon the transactions; there is not an important fact necessary to the cause, which has not either been admitted by Castleman in his answer and deposition, or could easily have been shown by him by the production of papers or proof easily accessable.

This suit was instituted on the 4th day of December 1880, within *ten* years after the release was recorded; within twenty years after the first single bill fell due; within sixteen years after the last one fell due, and within a few months after the plaintiff had actual knowledge of the said release. Not one of the said single bills would have been barred by any statute of limitation in force, either at the time of the bringing of the suit, or now. I give below copies of the statute of limitations of West Virginia, so far as this cause can be affected by them. The first general statute went into effect on the first day of April 1869, and is as follows:

"Every action to recover money, which is founded upon an award or on a contract, other than a judgment or recog-

nuisance, shall be brought within the following number of years next after the right to bring the same shall have first accrued, that is to say: if the case be upon an indemnifying bond taken under any statute, or upon a bond of an executor, administrator, guardian, curator, committee, sheriff or deputy sheriff, clerk or deputy clerk, or any other fiduciary or public officer, within ten years; *if it be upon any other contract by writing under seal, heretofore executed, within twenty years*, but if executed after the passage of this act, *within ten years.*" (See Code of 1868, chapter 104, sec. 6, p. 547.) This act was amended by the act of 1882, after this suit was brought, by simply striking out the words "heretofore executed," and inserting in their place the words "executed before the first day of April, one thousand eight hundred and sixty-nine," thus making the present statute read: If it be upon any other contract by writing under seal, within twenty years. (See *Warth's new Code* p. 727, chapter 104, sec. 6.) At the time this suit was brought, the following statute passed March 1st, 1865, was also the law of the State, viz: "In computing the time within which any civil suit, proceeding or appeal shall be barred by the statute of limitations, the period from the seventeenth day of April, eighteen hundred and sixty-one, to the date of the passage of this Act, shall be excluded from such computation." (See Acts 1865, chapter 81, p. 72.) This last act was carried into the Code of 1868, which went into effect the first day of April 1869. (See Code of 1868, chapter 136, p. 643, sec. 3.) It was the statute in 1880, when this suit was brought. A change was made since, in no wise effecting the question, because made since, by the amendment of this last quoted section, by the Acts of 1882, p. 353, chapter 124. The section now reads "In computing the time within which any action of debt, detinue, covenant, assumpsit, trover, trespass or case, pending at the time this chapter as amended takes effect, shall be barred by the statute of limitation, the period from the seventeenth day of April, one thousand eight hundred and sixty-one to the first day of March, one thousand eight hundred and sixty-five, shall be excluded from such computation." See *Warth's Code*, p. 855, ch. 136, sec. 4, and Acts of 1882, ch. 124, sec. 4, p. 354.

Now the single bills (under seal) in question fell due and

the right of action first accrued upon them as follows: on the first days of January 1861, 1862, 1863 and 1864, respectively, but by operation of the statute quoted of March 1st, 1865, *all the time from the 17th day of April* 1861, *until the first day of March* 1865, *is not to be counted*, so that the bond which fell due on the first day of January 1861, ran from that day until the 17th day of April following, (or 117 days,) *then* the operation of the statute was suspended until March 1st, 1865. Suit therefore could have been brought upon that bond, and not barred at any time before the 3d day of November 1884; that being the twenty years next after the right of action accrued upon that bond, counting out the time from 17th of April, 1861, until the first day of March 1865. Suits could, of course, have been instituted and maintained upon each of the other three bonds, so as not to be affected by the statute of limitations at any time before the first day of March 1885. Besides, it is clear from the case that the plaintiff could not have taken the oath commonly known as the "test oath." There was another statute passed by the Legislature of West Virginia, which is still a binding statute. It was passed on the 6th day of February 1873, and is as follows: "That in computing the time within which any civil suit, motion to recover money, proceeding or appeal shall be brought, instituted or taken, or petition filed to have proceeding re-heard, by persons who could not truly make the affidavit prescribed by section twenty-seven of chapter one hundred and six, of the Code of West Virginia, the period from the twenty-eighth day of February 1865, to the passage of this Act shall be excluded from such computation, and upon any proper issue, the affidavit of a party that he could not truly take such oath, shall be prima facie evidence thereof, &c." (See Acts 1872–73, chapter 28, page 76.) The oath referred to in this Act was the oath commonly known as the "test oath" by which a person was forbidden to sue, &c., unless he took an oath, in effect, that he had in no way given aid or comfort to the rebellion. If that law is still upon the statute book, and I cannot find that it has been repealed, certainly not in terms, the right to recover upon said bonds would be extended further than the year 1885.

We insist: that the doctrine of laches invoked by Castleman's counsel, has no application here; that the rule stated by Lord Camden, in *Smith* vs. *Clay*, Amb. R., 645, so often quoted, does not suit this cause. We do insist that the rule laid down by our own Court of Appeals, in the case of *Camden* vs. *Snyder*, 24, W. Va., 674, is the one to apply in this cause. I quote the rule, it is: "In equity the deed of trust is regarded as security for the debt, and the debt as the principal; *therefore, so long as the recovery at law on the bond or note given for the debt is not barred by the statute of limitations, the right to enforce the lien of the trust continues and may be enforced.*"

Indeed, our Court, in the case just cited, goes further, when, after saying that presumption of payment does not arise until after twenty years, holds that: "Even if the notes secured by a deed of trust were barred by the statute of limitations, yet that would not extinguish the security or prevent the enforcement of the lien."

The last reported case on this subject, decided by this Court, is that of *Allen* vs. *Brown*, 141 U. S., 528; a case much in point here, and in which, on page 537, this Court says: "*The question of laches and staleness of claim virtually falls with that of the defense of the statute of limitations. So long as the demands secured were not barred by the statute of limitations there could be no laches in prosecuting a suit upon the mortgages to enforce those demands. The mortgage is virtually a security for the debt, and an incident to it.*"

This Court, in the case referred to, but confirms the doctrine set forth, in the case of *Ewell* vs. *Daggs*, 108 U. S., 143, another case much in point here. Other analogous cases could be cited, of course, but it is not deemed necessary.

Again, we insist that in the numerous cases, in which the doctrine laid down by Lord Camden, has been enforced, the facts are far different from those shown in this case, and the reasoning does not apply here. Many cases may be found, but it would be impossible to examine them separately and point out the distinctions. Among the later cases, in this Court upon the subject, are *Richards* vs. *Mackall*, 124 U. S., 183; *Sullivan* vs. *Railroad Company*, 94 U. S., 812, *Morris* vs. *Haggin*, 136 U. S., 386; *Speidel* vs. *Henrici*, 120 U. S.,

387; *Hanner* vs. *Moulton*, 138 U. S., 495. Without attempting comment upon the different cases, the following quotation from the last named case, on page 495, will serve to explain the difference in principle, and of fact, with that class of cases, and the case now under consideration: "An interval of nearly thirteen years elapsed between the sale of the certificate and the filing of the bill in this suit. The value of the property has largely increased. Parties interested and witnesses have died, and the memory of those who survive has decayed. Not a person who is now interested in any of the land is implicated in the fraud charged in the bill."

Again; it is submitted that *if* ours was one of those causes purely and exclusively equitable and which should be determined entirely regardless of any analogy to the statute of limitations in this State, the fraud in law, if not in fact, upon the part of Castleman, is so undoubted, the loss to the estate so absolute; the facts shown should protect the plaintiff and his brother and sister from the application of any rule of laches to prevent their recovery; particularly when all the witnesses were alive; all the parties in interest were alive, the debts amply secured, and the defendant tells his own story.

The doctrine of laches is so well and ably discussed by Snyder, J., in one of our own cases, that of *Cranmer* vs. *McSwords*, 24 W. Va., 601, a case where the statute of limitations had no application, that I take the liberty of asking the special attention of this Court to what he says, on p. 601, "Laches is certainly an element which cannot be safely overlooked in cases of this kind, but a review of the cases on this subject will show that it has not always been the most important;" then, after quoting the rule stated by Lord Camden, in *Smith* vs. *Clay* Amb. R. 645, he continues "It must be admitted that this rule, so popular and often quoted, is altogether too general and indefinite to furnish much practicable aid in the determination of particular cases. Where the lapse of time *has been less than twenty years*, the decided cases show that the most important considerations in support of this defense are, *first*, the death of the parties to the original tranactions involved or the intervention of the rights of third parties; *second*, the loss of evidence

where the transactions are complicated so as to render it difficult if not impossible to do justice; and *third*, the character of the evidence by which it is sought to establish the demand, for instance if the important facts are to be proved by parol testimony depending on the mere recollection of witnesses. But this last consideration has very little weight when the proof is written or the subject is susceptible of clear and distinct proof. Where these elements exist, or some of them, courts have denied relief after the lapse of much less than twenty years, but I have found no case in which relief was denied when the lapse of time was less than fourteen years. And when none of these elements exist and the court is satisfied that justice can be certainly attained notwithstanding the lapse of time, relief has been granted after a period much greater than twenty years."

I therefore submit, that:

1. The payments to the fiduciaries in such depreciated currency were not payments at all.

2. That such payments, in this case, when the money was of no use whatever to the estate, received by the fiduciaries, was a fraud, growing out of the administrator's suffering payment, in such currency, and under such circumstances, of a debt so well secured.

3. That the facts show a deliberate purpose upon the part of Castleman to pay off his debt in depreciated currency, and thus to gain an advantage of the estate of Mr. Opie, and of his children, and that this was a fraud deserving no sympathy, especially in a Court of Equity.

4. That there is no proof either that the plaintiff, or John or Mary ever consented to such payments or ever ratified them.

5. That there are no laches shown in this case which should prevent recovery.

Respectfully submitted,

ROBERT WHITE,

Counsel for H. L. Opie, John N. Opie and Mary Meade.

This Map marked Exhibit "O"
and filed with George M. French's deposition
and made a part thereof, this January 18th 1876
J. H. Scroggins
Notary Public

This map is referred to in George M. French's depositions
in the case of William H. Gaines and Maria Gaines a
John Kusterland George H. Smith and marked in
as Exhibit "P" and made a part thereof, this Janu
J.H.S

R.19W.

T.2S.

T.3S.

No 302
Smith
vs
Gaines
et al.
p.39

Sec 29

Sec 28

Sec 32

Sec 33

Sec 5

Sec 4

New Madrid Claim

Henry M. Rector
170.55 acres

W. H. Gaines
J. C. Hale
Claimants for S½ Sec 33

Cemetery

Gaines Avenue

Prospect Ave

Whittington Ave

Malvern Ave

Central Ave

Bathhouse & Spring

Superior Bathhouse & Spring

Hale Bathhouse & Spring

Arlington Hotel

Hot Springs Reservation

CLAIM
OF T
HOT SPRINGS
GARLAND C
ARKAN
1875

Names of C

No	Name	No	Name	No	Name
1	Elvira Rush	2	Mary A. Baker	3	Rufus Baker
7	Noah Avery	8	A Smith	9	Carmichael Mount
13	Jno Ceylon	14	Caroline Miller	15	Geo Summers
19	Black Quarles	20	Anna Norton	21	T Norton
25	Henry Alexander	26	Sheldes Walker	27	D.D. Kline
31	Henry Alexander	32	John Williams	33	A.M. Clay
37	Ellen Nailor	38	O.S. Broadwell	39	Ellen Coby
43	Thad Taylor	44	Natalia Trimble	45	Tommy Bryant
49	D.L. Meeks	50	Andrew Strain	51	Wm A. Kirkpatrick
55	Ann R. Claybrook	56	Alfred Nellum	57	S.A. Colburn
61	Ann Johnson	62	J. Karnofsky	63	Caroline Karnofsky
67	William Haney	68	Sidney Grant	69	Jas Maddux
73	T.B. Dudds	74	S.W. Jones	75	Sarah E. Walker
79	H. M. Clark & Co	80	Peter Davis	81	
85	Buckner Roberts	86	Geo P. McKinney	87	Frank R. Moore
91	W.S. Chapin	92	John Garner	93	Jas Smith
97	T.J. Highland	98	Robert B. Jaggers	99	E. Foreman
103	Eliza Ann Rowton	104	Mrs Hannah Alexander	105	Pulley Jones
109	A. Sutton	110	[illegible]	111	W. A. Moore
115	Wm Palmer	116	P.M. Ellsworth M.D	117	Mrs. A. Ellsworth
121	B.W. Goode	122	E.S. Allcorn	123	Nick Ward
127	Geo. M. Murray	128	John Rathbun	129	Alfred Mahelin
133	P.T. Jeffries	134	M. Marcowitz	135	M. Marcowitz
139	Mrs. Wilson	140	P.T. Hyldelin	141	Jas P. Smith
145	J.P. Morris	146	B.B. Tilley	147	Jonathan Brantley
151	Joseph Morrison	152	J.L. Austin	153	A Smith
157	Army Flowers	158	Sarah Flowers	159	W.P. Porter
163	John Armstrong	164	O.L.B. Caver	165	J.W. Kendall
169	Chas Barnes	170	Chris. Hagan	171	Jas Mangovan
175	Owen O'Donald	176	John Simonds	177	Mrs Louisa Blansdell
181	Mary Gaines	182	Albert Balding	183	N Lanier
187	Elizabeth Earl	188	L.N. Turner	189	R.T. Pott
193	Jas Kinnahan	194	J.M. Rice	195	C.M. Mathews
199	Geo Sadler	200	Geo W. Baxter	201	Emily Runyor
205	J.H. Nichols	206	J.H. Nicholds	207	Mrs Brannan
211	Ephriam Terry	212	T. Dengler	213	Frank Ryan
217	J.P. Porter	218	Jeremiah Fenton	219	F.A. Rice
223	W.T. Willoughby	224	E.J. Farley	225	Harris Oller
229	John Meier	230	T.J. Reid M.D.	231	M. Jacks
235	Mc Allister & Rayford	236	W.J. Crim	237	J. Snider
241	Elizabeth Locke	242	Wylie Clayton	243	Henry Cloyes
247	Mrs Mitchland	248	Arthur Porter	249	Henry Jones
253	J.W. Summers	254	Elizabeth Davis	255	Mrs Rodgers
259	Alb Davis	260	C.A. Rockafellow	261	I.O.O.F.
265	Wm McLain	266	Abner & Gaines	267	Ritchie & Ball
271	C. Bergner	272	Indiana Guggenheim	273	Henry Bergenheim
277	Geo A Menninger	278	Alfred Whittington	279	Wm M. Pa[illegible]
283	D.F. O'Bryan	284	C.W.O'Bryan	285	Mrs. B.T. Elliott
289	J. Kennar	290	Geo Mason	291	Mary Ryan
295	D.H. Garraghty	296	M. Maher	297	P.T. Delanky
301	Wm. Rose	302	F.D. Brown	303	M.L. Smith
307	John K. Gills	308	Mrs Hardy	309	Curtis Jacks
313	Henry Grimm	314	Nancy Murphy	315	A Morris
319	Gentry	320	F.E. Boggs	321	T.W. Ellis
325	Evans Rayant	326	Alexander Peeples	327	Ferdinand Keelon
331	Rose Hill	332	Pleasant Murphy	333	Cornell Murphy
337	Joshua Crawford	338	Jas Harris	339	J.A. Robertson
343	Levi Chatman	344	K. Lynch	345	W.C. Shields
349	J.M. Peeler Jr.	350	F.W. Rector	351	Smith Scoggin
355	Nat Mooney	356	William M. Mooney	357	Charles Mayberry
361	John A. Watkins	362	J.P. Bryant	363	John W. Preston
367	Henry A. Cayce	368	Asa Cayce	369	J.J. Sumpter
373	J.P. Evans	374	John Irwin	375	J. Mowry
379	A.F. Beard	380	Mr. Perkins	381	Jarvis Reed
385	A.H. Bailey	386	L.L. Butterfield	387	W.C. Lynch
391	W.H. Seay	392	J.A. Shipman	393	Jason Smith
397	Geo Cate	398	Mr. Rose	399	Wm. Ardanhire
403	Wm Hastins	404	Thos. Hastings	405	Oliver Ketchum
409	Mr Garner	410	Mr. Livingstone	411	J.T. Baxter
415	Estella Clayton	416	Alex. Stoneham	417	Mary Ward
421	Malvina Taylor	422	Mary Harvey	423	W. Wellington
427	T. Ellmore	428	W.P. Walsh	429	Mathilda Lipscomb
433	Moses Jones	434	Sam Jacks	435	Augustus Thrusher
439	Chas Caughman	440	Mrs. Smith	441	Jas Cole
445	Spencer Jones	446	W.A. Sivels	447	Jonathan Wilks
451	Amanda Bryant	452	T.M. Williams	453	Nancy Hill
457	Pole Wyly	458	Mrs Amelia Taylor	459	W.F. Benton
463	Sam Pinkle	464	John Gates	465	A.S. Woodcock
469	Jas F. Jordan	470	Hector Bonds Rector	471	G.W. Savage M.D
475	Mrs Horton	476	Acinda Wilmore	477	Jas J. Wells
481	John Parker	482	Geo Delaney	483	Wm Seidman

We certify that the above Map of the Hot Springs Reser
with the field notes of our survey thereof
Hot Springs Ark
Oct 20th 1875.
Geo. M. French
C.A. Douglas

This Map marked Exhibit "O" and filed with George M. French's deposition and made a part thereof, this January 15th 1886
J. H. Scroggins
Notary Public

This map is referred to in George M. French's deposition in the case of William H. Gaines and Maria Gaines against John Rutherland, George H. Smith and others in this case as Exhibit "P" and made a part thereof, this January 15th 1886
J. H. Scroggins, Notary Public.

R. 19 W.

Sec 29

Sec 28

Sec 32

Sec 33

Sec 5

Sec 4

Spring Branch

Whittington Ave

Reserve St

Central Ave

Hot Springs & Little Rock Road

Cemetery

Gaines Avenue

Main St

New Madrid Claim

Henry M. Rector
190.15 acres

W. H. Gaines
J. C. Hale
Claimants for SW ¼ Sec 33

CLAIM-MAP
OF THE
HOT SPRINGS RESERVATION.
GARLAND COUNTY
ARKANSAS.

800ft to one inch

1875

Names of Claimants.

No.	Name	No.	Name	No.	Name	No.	Name	No.	Name	No.	Name
1	Elbert Birch	2	Mary A. Baker	3	Rufus Baker	4	Amelia Hart	5	Wm. A. Moore	6	Jno. G. Jones
7	Jonas Avery	8	A. J. Smith	9	Caroline Vincent	10	Geo. Wright	11	Samuel Pettit	12	Henry Price
13	Jos. Coyle	14	Caroline Miller	15	Geo. D. Summers	16	Thos. Webb	17	G. P.C. Kimbrough	18	Jos. Reynolds
19	Benj. Quarles	20	Fiora Norton	21	T. Norton	22	E.M. Scott	23	Fannie Wells	24	J.S. Poole
25	Chas. C. Sutton	26	Stephen Walker	27	B. J. Kline	28	Sarah J. Loveridge	29	Cap Roberts	30	Maria Boggs
31	Henry Alexander	32	John Williams	33	W. H. Kline	34	Thos. N. Lewis	35	Alex Peters	36	E. B. Smith
37	Ellen Walker	38	J. S. Broadwell	39	Ellen Long	40	P. J. Ledbetter	41	Henry Whittington	42	Mary A. Watson
43	Thad. Taylor	44	Mahala Trimble	45	Tamzy Bryant	46	J. C. Morris	47	Lucy Whitehead	48	S. W. Franklin
49	D.L. Morris	50	Andrew Hixson	51	Wm. A. Kirkpatrick	52	H. A. Whittington	53	Rebecca Woodrum	54	Andrew Bone
55	Ann R. Claybrook	56	Alfred Kellum	57	S. A. Dickson	58	Green Payne	59	Mrs. C. D. Bell	60	A. M. Bell
61	Ann Johnson	62	J. Karatofsky	63	Geo. A. Karatofsky	64	Isaac Karatofsky	65	Thos. Polk	66	Henry Haney
67	William Haney	68	Sidney Grant	69	Jas. Madison	70	Jas. Thompson	71	Mary A. Thompson	72	E. Miller
73	J. B. Dodds	74	S. W. Jones	75	Sarah B. Walker	76	Mary Dozier	77	R. M. Harris	78	Millie Steel
79	H. M. Clarke & Co.	80	A. P. Smith	81	Peter Davis	82	Robert A. Carlson	83	A. D. Cain	84	J. P. Scott
85	Buckner Roberts	86	Geo. P. McKinney	87	Frank R. Moore	88	C. H. Scott	89	Isaac Murphy	90	Mrs. F. J. Scott
91	G. S. Chapin	92	John Garner	93	Jas. Smith	94	Samuel Davis	95	Jonas Spiva	96	John Thompson
97	T. J. Highland	98	Robert B. Jaggers	99	E. Foreman	100	C. A. Townsend	101	L. D. Bridin	102	Albert Foster
103	Elias Van Rensselaer	104	Mrs Hannah Alexander	105	Paisley Jones	106	Peggy Mulholland	107	Mrs. A. Cunningham	108	J. J. Crocker
109	A. Nelson	110	S. Clear	111	W. A. Moore	112	A. D. Littler	113	Easter Harold	114	Thos Ross
115	Wm. Palmer	116	P. H. Ellsworth, M.D.	117	Mrs. S. A. Ellsworth	118	Mrs. J. Corbett	119	C. Cowan	120	Mrs. Augustus Stitt
121	B. W. Goode	122	L. S. Ailard	123	Oak Ward	124	Baxter & Ware	125	Mrs. Maria Gaines	126	Jno. H. Davis
127	Wm. C. Murray	128	John McMillin	129	Alfred McMillin	130	John Perkins	131	Mrs. M. C. Heath	132	Mrs. Hannah Stocker
133	P. Patterson	134	M. Mascowitz	135	H. Mascowitz	136	B. Hund & Co.	137	W. J. Bell	138	Mat. McGinnis
139	Mike Nielson	140	P. T. Stricklin	141	Jas. T. Smith	142	J. B. McCaffrey	143	R. B. Clyde	144	Perry Neff
145	J. P. Morris	146	A. D. Shirley	147	Jonathan Brantley	148	H. W. Brantley	149	Jesse Ware	150	Mrs. Martha A. Murphree
151	Joseph Morrison	152	J. L. Austin	153	A. Smith	154	Stricklin & Lamar	155	R. E. Allen	156	Yanley & Bro
157	Ring Flowers	158	Sarah Flowers	159	R. T. Parker	160	Albert B. Gaines	161	Lee Greenlief	162	Geo. Jones
163	John Armstrong	164	S. L. B. Cauer	165	J. W. Kimball	166	Jane Bazard	167	E. A. Sorgeey	168	G. Pratt
169	Jas. Barnes	170	Chris Hagan	171	Jas. Mungovan	172	Mrs. A. M. Turner	173	Mrs. L. B. Harrington	174	H. J. Cathran
175	Owen O'Donald	176	John Simonds	177	Mrs. Louisa Blaisdell	178	Wm. H. Gaines	179	Sergeant Pannin	180	Fannie Gaines
181	Mary Gaines	182	Albert Belding	183	H. Tanner	184	Mary Thompson	185	D. Killion	186	T. B. Crow
187	Elizabeth Earl	188	L. H. Turner	189	R. T. Fort	190	M. J. Woods	191	Jas. King	192	Watkins & Sanlor
193	Jas. Kannanan	194	D. M. Rice	195	J. M. Mathews	196	Enoch Woolman	197	Martin O'Harrison	198	D. E. White
199	Geo. Sadler	200	Geo. W. Baxter	201	Emily Runyor	202	H. T. Woodland	203	C. H. Plank	204	Jennie Nelson
205	J. H. Nichols	206	J. H. Nicholson	207	Mrs. Brannan	208	Ghost Bush	209	Wm. Wolfinger	210	J. T. Chisholm
211	Ephriam Terry	212	T. Dongler	213	Frank Flynn	214	C. R. Quinn	215	Mrs. L. A. Maney	216	Mrs. Mary Irani
217	D. P. Norton	218	Dennis & Tonton	219	T. A. Akers	220	Barnard Brown	221	Jas. H. Whitley	222	Burkhalter Hix
223	W. T. Willoughby	224	Ed Farley	225	Harris Oller	226	Jas Cherry	227	Mary A. Linuton	228	Thos. Duke
229	John Mercer	230	T. J. Reed, M.D.	231	M. Jacks	232	Lizzie Ward	233	Dan. McMichael	234	T. J. Bell
235	M. Alistette Rayford	236	N. T. Crim	237	J. Snider	238	L. F. Weir	239	Wm. Whyte	240	R. Cole Johnson
241	Elizabeth Looker	242	Wylie Clayton	243	Henry Cloyes	244	Alfred Belding	245	Crawford Dunlavy	246	Julia A. Davis
247	Jno. McClelland	248	Esther Parker	249	Henry Jones	250	Jas. B. Wood	251	H. E. Clyde	252	H'n. Burns
253	J. H. Simmons	254	Elizabeth Davis	255	Mrs. Rodgers	256	Mrs. Smith	257	A. S. Gifford, MD	258	Almond Brooks, M.D.
259	A. L. Davis	260	C. F. Rockafellow	261	J. O. Fox	262	Sally G. Fox	263	W. A. Little	264	D. A. Custler
265	Wm. McLain	266	Abner L. Gaines	267	Mrs. Ball	268	J. Griffith	269	Mrs. A. Rains	270	Ophelia Chavers
271	E. Burgener	272	Julius Guggenheim	273	Henry Guggenheim	274	W. T. Harvey	275	John Kinhead	276	Eliza Burns
277	Geo. Menninger	278	Alfred Whittington	279	Wm. McFarquer	280	Chas Bryant	281	C. C. Aiken	282	M. O'Bryan
283	D. V. Bryant	284	C. H. O'Bryan	285	Mrs. D. T. Elliott	286	H. J. Justus	287	Michal Conley	288	Boston Hall
289	C. Kempner	290	Geo Mason	291	Mary Haley	292	Thos Evans	293	H. P. Smith	294	Mrs. Nelson
295	P. H. Garraghty	296	M. Maher	297	P. J. Delaney	298	Mrs. Davis	299	H. C. Howard	300	Mrs. Custer
301	Wm. Shaw	302	T. P. Brown	303	A. L. Smith	304	Emma Taylor	305	Sam Smith	306	Alexander Smith
307	John K. Gillis	308	Mrs Hardy	309	Calvin Davis	310	T. M. Jones	311	H. T. Rock	312	P. R. Lewis
313	Henry Grimm	314	Nancy Murphy	315	A. Morris	316	Hannah Robinson	317	Charlie Williams	318	Geo Johnson
319	Gaines	320	P. E. Higgs	321	T. Walker	322	J. C. Stanton	323	J. C. Moore	324	A. J. Nelson
325	Evans Wright	326	Alexander Peoples	327	Ferdinand Keelon	328	Jas. McLeod	329	John McLeod	330	Lyle & Menighall
331	Friend Hill	332	Pleasant Murphy	333	Criswell Murphy	334	Jesse Gray	335	John Carter	336	Riley Hackaday
337	Joshua Crawford	338	Jas Harris	339	J. R. Robinson	340	Mr Booth	341	Lewis Lynch	342	Noel Scott
343	Levi Chalman	344	K. Lynch	345	W. C. Steeles	346	Jas Porter	347	W. H. Lewis	348	Hills Wood
349	W. M. Rector Jr.	350	E. W. Rector	351	Smith Scoggin	352	John Gable	353	E. G. Smith	354	W. Platts
355	Pat. Mooney	356	Wilmer McKinney	357	Chester Kingsbury	358	G. Smith	359	King Mooney	360	Wilson Kingsbury
361	John A. Watkins	362	J. P. Bryant	363	John W. Preston	364	L. Smith	365	M. Latta	366	G. G. Latta
367	Henry A. Cayce	368	Ada Cayce	369	J. J. Sumpter	370	G. Smith	371	Pat Carmody	372	Robt A. Branson
373	C. F. Board	374	John Jones	375	J. P. Lewis	376	J. C. Colebarn	377	Hardy Gresham	378	J. P. Wood
379	A. K. Board	380	Mr Pipkins	381	Jane L. Reed	382	J. R. Wood	383	John Turner	384	A. H. Thompson
385	A. H. Burley	386	E. L. Butterfield	387	J. C. Lynch	388	Jo Clary	389	J. J. Sutton	390	P. Sanders
391	Wm Seay	392	J. J. Shipman	393	Aaron Smith	394	Davis & Cole	395	Jesse Clayton	396	Jno. Alexander
397	Geo Cole	398	Mr. Rose	399	Wm. Dunkenhire	400	M. S. Summers	401	Jas. Mills	402	Wm Terry
403	Wm Hastkins	404	Thos Haskins	405	Oliver Ketchum	406	Rufus Haskins	407	Melinda Ross	408	Yancy & Box
409	Mr Garner	410	Mr. Livingstone	411	J. T. Baker	412	Joe Wesley	413	Mary A. Evans	414	Wm. Barnes
415	Isabella Hegdon	416	Alex Stoneham	417	Mary Ward	418	Emily Meredith	419	Rebecca Crow	420	Hamlin Burson
421	Malvina Taylor	422	Hiram Harvey	423	W. Wallington	424	Jas K. Collin	425	Henry Ware	426	Mrs Heller
427	T. Flinder	428	W. P. Walsh	429	Mathilda Lipscomb	430	S. M. Stiles & Co.	431	Jas. Hutchinson	432	Mrs Tenson
433	Moses Jones	434	Sam Jones	435	Augustus Thacker	436	Jane Cauley	437	C. Tanner	438	Sam Bellamy
439	Chas Caughman	440	Mrs Smith	441	Jas Cole	442	Frank Barnes	443	Jas Leathers	444	Mr Gardner
445	Spencer Sipes	446	W. A. Sivels	447	Jonathan Wilks	448	J. C. Tammel	449	Mrs Hollis	450	Mrs McCreary
451	Amanda Bryant	452	E. M. Williams	453	Hannah Hill	454	Mrs Harris	455	Morgan Puckett	456	Barnes Boswell
457	Robt. Wight	458	Mrs Amelia Keelor	459	W. F. Banton	460	Tom Spencer	461	G. W. Brantley	462	J. F. Parker
463	Henry Hankle	464	John Gillis	465	A. J. Woodcock	466	Mr Calhoun	467	Mrs Jones	468	T. J. Bryant
469	Jas T. Jordan	470	Rector, Davis & Keelor	471	G. W. Lawrence, M.D.	472	T. J. Robertson	473	H. D. Batchen	474	Lewis Nelson
475	John Watson	476	John H. Wilmore	477	Jas T. Walsh	478	Bradley Carter	479	Hair & George	480	Porter Institute
481	Jula Parker	482	Geo. Belding	483	Wm. Jeckman	484	Geo Hall				

We certify, that the above Map of the Hot Springs Reservation is correct, and drawn in strict conformity with the field notes of our survey thereof.

Hot Springs Ark.
Oct 20th 1875.

Geo. M. French C.E. & Surveyor
E. A. Douglas C.E. & Topographer

R.19W.

T.2S.

T.3S.

No 302. Smith. vs Gaines et al. } p.39

Sec 29

Sec 28

Sec 32

Sec 33

Sec 5

Sec 4

New Madrid Claim

Henry M. Rector 1903.5 acres

W.M. Gaines J.C. Hale Claimants for S½ of Sec 33

Cemetery

Cottage Avenue

CLAIM-MA

OF THE

HOT SPRINGS RES

GARLAND COUNTY

ARKANSA

1875

Names of Claima

No.	Name	No.	Name	No.	Name	No.	Name
1	Elvira Rush	8	Mary A. Baker	3	Rufus Baker	4	Amelia Mary
7	Noah Kemp	8	A.S. Smith	9	Cornelius Amont	10	George Wright
13	Joe Cayburn	14	Caroline Miller	15	Geo. J. Summers	16	Pat. Keller
18	Bird Langley	20	Geo. Norton	21	D. Norton	22	S.M. Sears
25	Chas. Bolton	26	Sheriff's Rents	27	D. Safrit	28	Samuel Lindsey
31	Henry Shoemaker	32	John Williams	33	A.M. King	34	Chas. Leslie
37	Ellen Walker	38	O.S. Broadwell	39	Ellen Coby	40	J.J. Ledbridge
43	Thad. Taylor	44	Mahala Trimble	45	Tamsy Bryant	46	J.C. Morris
49	R.L. Mears	50	Andrew Green	51	Wm. A. Kirkpatrick	52	H.A. Whittington
55	Ann R. Claybrook	56	Alfred Bellum	57	S.A. Cabiness	58	Green Payne
61	Ann Johnson	62	J. Karatofsky	63	Cecelia Karatofsky	64	Isaac Karatofsky
67	W. Hutchinson	68	Sidney Grant	69	Jas. Madison	70	Jas. Thompson
73	J.B. Dodds	74	J.M. Jones	75	Jacob D. Walker	76	Mrs. Walker
79	H.M. Channell	80	A.P. Smith	81	Peter Davis	82	Robert A. Carlton
85	Buckner Roberts	86	Geo. M. McKinney	87	Frank R. Moore	88	T.M. Scott
91	O.S. Chapin	92	John Garner	93	Jas. Smith	94	Samuel Davis
97	T.J.P. Hopkins	98	Richard B. Daggers	99	D. Foreman	100	C.M. Townsend
103	Elias Jon Rousseau	104	Mesdames Alexander	105	Paisley Jones	106	Peggy Mulholland
109	A. Holden	110	Oscar	111	W.A. Moore	112	A.P. Miller
115	W.M. Palmer	116	Mr. Ellsworth M.D	117	Mrs. A. Ellsworth	118	Mrs. J. Corbett
121	B.W. Goode	122	L.S. Alford	123	Oak Ward	124	Baxter Ware
127	Wm. McMurray	128	John Hamlin	129	Alfred Mullin	130	John Keller
133	P.A. Neffner	134	M. Maxwell	135	A. Maxwell	136	J. Hurd & Co
139	M.E. Watkins	140	P.T. Streetlin	141	Jas P. Smith	142	J.B. McCaffrey
145	J.P. Morris	146	A.B. Tinsley	147	Jonathan Brantley	148	H.M. Brantley
151	Joseph Morrison	152	J.L. Austin	153	A. Smith	154	Dreiling Lahar
157	King Downs	158	Sarah Flowers	159	R.F. Parker	160	Albert B. Gaines
163	John Armstrong	164	C.L.B. Cover	165	V.M. Kimbrell	166	Isaac Baird
169	Jas. Barnes	170	Chris. Hagan	171	Jas. Mangovan	172	Mrs. A.M. Turner
175	Owen O'Donald	176	John Simpkins	177	Mrs. Louisa Blaisdell	178	Wm. H. Gaines
181	Mary Gaines	182	Albert Belding	183	H. Lanier	184	Mary Thompson
187	Elizabeth Earl	188	L.A. Turner	189	R.T. York	190	M. J. Woods
193	Jas. Kinnison	194	J.M. Rice	195	T.M. Holmes	196	Enoch Holman
199	Geo. Sadler	200	Geo. W. Baxter	201	Emily Runyor	202	H.T. Weeland
205	J.D. Nichols	206	J.M. Reynolds	207	Mrs. Brannon	208	Chas. Bush
211	Ephriam Terry	212	T. Bangler	213	Frank Ryan	214	T.B. Bacon
217	B.F. Porter	218	Jeremiah Penton	219	P.A. Rice	220	Barnard Brown
223	W.M. Willoughby	224	D.F. Corley	225	Harris Oller	226	Jas. Cherry
229	John Akers	230	T.J. Reed M.D	231	M. Jacks	232	Lizzie Ward
235	Mc Allister Rayford	236	H.T. Grim	237	J. Snuter	238	L.P. Weir
241	Elizabeth Cockrell	242	Wylie Clayton	243	Henry Cloyes	244	Alfred Baldwin
247	Geo. Mitchland	248	Esther Parker	249	Henry Jones	250	Jas B. Woods
253	J. Summons	254	Elizabeth Davis	255	Rev. Rodgers	256	Mrs. Smith
259	A.G. Davis	260	C.A. Rockafellow	261	J.O. Fox	262	Sally G. Fox
265	Wm. Melton	266	Abner L. Gaines	267	Richter Ball	268	J. Griffith
271	E. Burgner	272	Solonia Guggenheim	273	Geny Guggenheim	274	H.T. Harvey
277	Geo. Henninger	278	Alfred Whittington	279	Wm. M. Fancuse	280	Chas. Bryant
283	J.F. O'Bryan	284	C.A.O. Bryan	285	Mrs. B.T. Elliott	286	B.T. Elliott
289	C. Kemper	290	Geo Mason	291	Mary Haley	292	Thos. Brown
295	P.P. Geraghty	296	M. Maher	297	D.D. Delanky	298	Mrs. Davis
301	Wm. Abbot	302	T.P. Brown	303	Wm. Smith	304	Emma Taylor
307	John K. Ellis	308	Mrs. Hardy	309	Catrin Davis	310	T.H. Jones
313	Henry Grimm	314	Nancy Murphy	315	A. Morris	316	Hannah Reich
319	Geo. Grey	320	P.E. Hogge	321	T.H. Wiles	322	J.C. Stanton
325	Evans Wright	326	Alexander Peoples	327	Ferdinand Keelin	328	Jas. McGowan
331	Rich Hill	332	Pleasant Murphy	333	Criswell Murphy	334	Geo. Gray
337	Joshua Crawford	338	Jas. Harris	339	J.R. Robinson	340	Mr. Bush
343	Geo. Chatman	344	H. Lynch	345	W.C. Wells	346	Jas. Parker
349	H.H. Rector Jr.	350	E.W. Rector	351	Smith Scoggin	352	John Gable
355	Rolf. Mooney	356	Wilmer M. Mooney	357	Chester Kingsbury	358	Richard Hunt
361	John A. Watkins	362	J.P. Bryant	363	John W. Pritsford	364	L. Smith
367	Harry A. Cayce	368	Ada Cayce	369	J.J. Sumpter	370	C. Smith
373	J.P. Evans	374	John Jessin	375	J. Mowry	376	H. Calahurn
379	A.W. Board	380	Mc Pipkins	381	James Reed	382	J.R. Hood
385	A.M. Burley	386	L.L. Butterfield	387	J.C. Lynch	388	J.B. Clark
391	W.H. Davy	392	J.A. Simmon	393	Aaron Smith	394	Davis Cole
397	Geo. Cole	398	Mr. Rose	399	Wm. Gardenhire	400	W.S. Summers
403	Wm. Hopkins	404	Thos. Hopkins	405	Wm. Hardin	406	Richard Hunt
409	Mr. Garner	410	M. Livingstone	411	J.T. Baker	412	Joe Watts Ln
415	Isabella Hayden	416	Alex. Stoneham	417	Mary Ward	418	Emily Akers
421	Malvina Taylor	422	Mrs. Mc Harvey	423	Wyatt Hayton	424	Jack Cell
427	T. Flinde.	428	W.D. Walsh	429	Mathilda Lipscomb	430	S.N. Steele
433	Moses Jones	434	Sam Davis	435	Augustus Thrasher	436	Jas. Hall
439	Chas. Chapman	440	Mrs. Smith	441	Jas. Cole	442	Frank Bo
445	Spencer Ross	446	W.A. Swirls	447	Jonathan Wilks	448	J.C. Tram
451	Amanda Bryant	452	E.M. Williams	453	Langhill	454	Mrs. Hen
457	Polk. Wash	458	Mrs. Amelia Rector	459	W.F. Banton	460	J.H. Lane
463	Henry Randle	464	John Gillet	465	A.S. Maddox A	466	Mr. Cash
469	Jay T. Jordan	470	Rector, Bacon & Rector	471	O.M. Lawrence M.D	472	J.T. Robe
475	John Watson	476	Julia A. Whitmore	477	Jas. T. Walsh	478	J. Bullis
481	Jake Parker	482	Geo. Belzeing	483	Wm. Stedham	484	Geo. Hal

We certify that the above Map of the Hot Springs Reservation is co with the field notes of our survey thereof

Hot Springs Ark. Oct 20th 1875.

Geo. Mc French C.E. & Surve

E.A. Douglas C.E. & Topogr.

OF THE

HOT SPRINGS RESERVATION.

GARLAND COUNTY

ARKANSAS.

800ft to one inch

1875

Names of Claimants.

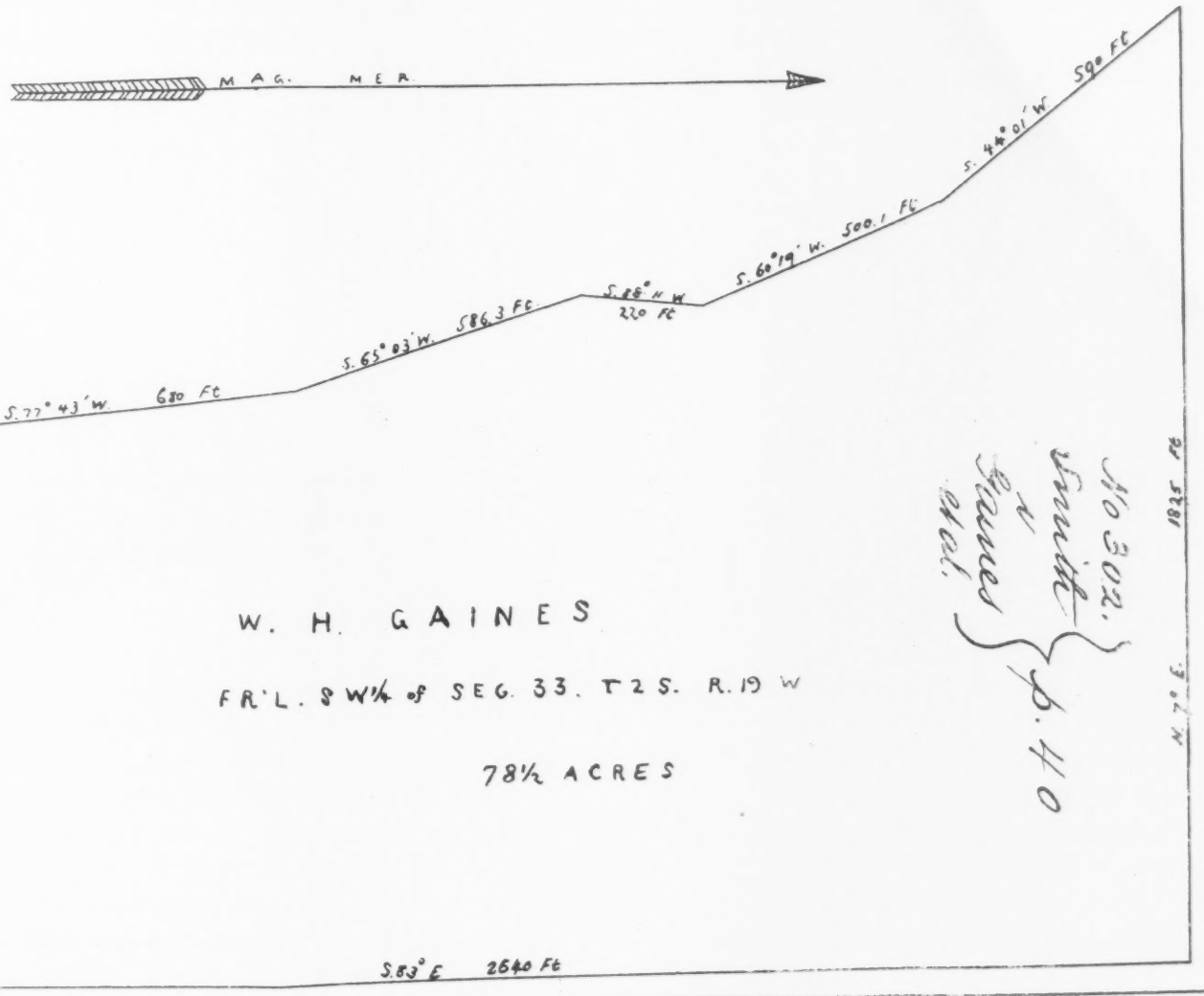
No	Name	No	Name	No	Name	No	Name	No	Name	No	Name
1	Elvira Bush	2	Mary A Baker	3	Rufus Baker	4	Amelia Mann	5	Wm. A. Wyatt	6	Mary E Jones
7	Dinah Reesy	8	A J Smith	9	Caroline Vincent	10	George Wright	11	Samuel Pruitt	12	Mary Bryan
13	Joe Cayburn	14	Caroline Miller	15	Geo O Summers	16	Capt Hobbs	17	P.H. Rumbough	18	Jas Reynolds
19	Black Quarles	20	Anna Horton	21	F Horton	22	E.M. Sears	23	Emmie White	24	Jo Poole
25	Maria C Bullow	26	Shields Walker	27	D.J. Klintz	28	Saman J Cloudsley	29	Cas Roberts	30	Marsh Goers
31	Henry Alexander	32	John William	33	W.H. Clay	34	Chas Bassett	35	Alex Peters	36	E.B. Smith
37	Ellen Mulder	38	D.S. Broadwell	39	Ellen Coby	40	P.J. Ledbetter	41	Henry Whittington	42	Maggie Hollon
43	Thad Taylor	44	Mahala Trimble	45	Temay Bryant	46	J.C. Morris	47	Lucy A Kincaid	48	J.M. Franklin
49	D.L. Moore	50	Andrew Strain	51	Wm. A. Kirkpatrick	52	H.M. Washington	53	Rebecca Goodrum	54	Andrew Rane
55	Ann R. Claybrook	56	Alfred Nelum	57	S.A. Colbourth	58	Green Payne	59	Mrs. C.D. Bell	60	A.M. Bell
61	Ann Johnson	62	J. Karatofsky	63	Gracian Karatofsky	64	Isaac Karatofsky	65	Thos. Polk	66	Henry Raney
67	William Haney	68	Sidney Grant	69	Jas. Madison	70	Jas. Thompson	71	Mary A Thompson	72	L. M. Little
73	T.B. Dudley	74	J.M. Jones	75	Sarah E Walker	76	Mrs. Dozier	77	B.M. Harris	78	Willie Steel
79	N. M. Clark & Co	80	A.R. Smith	81	Peter Davis	82	Richard Carlisle	83	T.D. Cain	84	J.P. Scott
85	Buckner Roberts	86	Geo P. M. Kinney	87	Frank R. Moore	88	D.H. Leslie	89	Isaac Murphy	90	Mrs. F. J. Scott
91	W.S. Shamp	92	John Garner	93	Jas Smith	94	Samuel Jones	95	Jonas Spiva	96	John Thompson
97	T.J. Highland	98	Robert B. Joggers	99	E. Foreman	100	C.A. Townsend	101	L.D. Bolden	102	Albert Foster
103	Elias Jan Robertson	104	Mrs Hannah Alexander	105	Paisley Jones	106	Peggy Hollingsworth	107	Wm. Cunningham	108	J. Acrosker
109	A Nelson	110	S Crane	111	W. E. Moore	112	A.J. Miller	113	Mrs. J. Dunnaway	114	Thos Ross
115	H.M. Palmer	116	P.H. Ellsworth M.D	117	Mrs. S. A. Ellsworth	118	Mrs J.S. Carhart	119	C. Cohen	120	A.J. Bennett Stitt
121	B.W. Goode	122	L.L. Alford	123	Oak Ward	124	Baxter Starr	125	Mrs. Maria Gaines	126	Wm. H. Baines
127	Geo. H. Murray	128	John Hollein	129	Alfred Hollein	130	John Keels	131	Mrs. M. Grath	132	Ferdinand Sengcker
133	P.F. Hurtrick	134	M. Moscowitz	135	M. Moscowitz	136	B. Hund & Co	137	W.J. Ball	138	Mollie Binns
139	Mike Wilson	140	P.T. Strickling	141	Jas P. Smith	142	J.B. McClure	143	R.B. Clyde	144	Perry Hiff
145	J.P. Morris	146	B.B. Shipley	147	Jonathan Brantley	148	H.W. Brantley	149	Jesse Ware	150	Mrs. Martha Murphree
151	Joseph Morrisson	152	J.L. Austin	153	A Smith	154	Strickling & Comar	155	R.E. Allen	156	Wesley A. Bell
157	King Flowers	158	Sarah Flowers	159	R.F. Parker	160	Albert B. Gaines	161	Lee Greenleaf	162	Geo Snow
163	John Armstrong	164	J.H. Kimball	165	J.H. Kimball	166	Jane Record	167	B.A. Skippey	168	G. Rozelle
169	Jas Barnes	170	Chas. Hogan	171	Jas. Mungovan	172	Mrs. L.B. Harrington	173	Mrs. L.B. Harrington	174	W.J. Cochran
175	Owen O'Donald	176	John Simonds	177	Mrs. Louisa Blaisdell	178	Wm H. Gaines	179	Stephen A Fannin	180	Frank Gaines
181	Mary Garnet	182	Albert Belding	183	H. Lanier	184	Mary Thompson	185	O. Eveillen	186	T.P. Crem
187	Elizabeth Earl	188	L.W. Turner	189	R.T. Fort	190	M.J. Woods	191	Jas King	192	Watkins & Sealer
193	Jas Hannahan	194	J.M. Rice	195	J.M. Mathews	196	Enoch Woolman	197	Martin P. Harrison	198	J.E. White
199	Geo Sadler	200	Geo W. Baxter	201	Emily Runyor	202	H.T. Weland	203	O.M. Dunn	204	Jennie Mixson
205	J.H. Nichols	206	J.H. Nicholds	207	Mrs. Brannan	208	Chas Bush	209	Wm. Wolfenger	210	J.T. Chandler
211	Ephram Terry	212	T. Dengler	213	Frank Flynn	214	C.R. Lewis	215	Mrs. L.A. Haney	216	Mrs. Mary Evans
217	D.F. Parker	213	Jeremiah Fenton	214	P.A. Kerr	220	Barnard Brown	221	Jas W. Whiteley	227	Brutus Carter
223	W.J. McLaughly	224	Ed Farley	225	Harris Otter	226	J. Cherry	227	Mary A. Johnston	228	Thos Dark
229	John Abner	230	T.J. Reid M.D.	231	M. Jacks	232	Lizzie Ward	233	Mari. Mc Minael	235	T.J. Bell
239	Jno McClellin Rayford	236	H.J. Crim	237	J. Snider	238	Liz Ware	239	Wm Wilkle	240	Peter Johnson
241	Elizabeth Looker	242	Wylie Clayton	243	Henry Clayes	244	Alfred Belding	245	Crawford Dunlavy	246	Julius A. Davis
247	Jno McClelland	248	Arthur Parker	249	Henry Jones	250	Jas B Woods	251	H. E. Clyde	252	W.H. Barry
253	A Simmons	254	Elizabeth Davis	255	Mrs Rodgers	256	Mrs. Smith	257	A.J. Cornell M.D	253	Almond Brooks M.D
253	A.G. Davis	260	C.A. Rockafellow	261	J.O. Fox	262	Sally G. Fox	263	W.A. Little	264	D.A. Castle
259	Wm. Nelson	266	Abner Gaines	267	Ritchie & Bell	265	J. Griffith	269	Frank Reese	270	Opelia Chavers
265	Wm. Wilson	272	Sedonia Guggenheim	273	Penny Guggenheim	274	W.T. Harvey	275	Tom Kincaid	276	Elisa Burke
271	E. Burgess	274	Alfred Wallington	279	Wm. McGeever	280	Chas Bryant	281	C.C. Aiken	282	M.C. O'Bryan
277	Geo Schlesinger	278	W.O. Bryan	285	Mrs. B.T. Elliott	286	R.J. Justus	287	Michal Conley	288	Powton & Foal
283	S.V. O'Bryan	284	Geo Watson	291	Mary Haley	292	Thos Evans	293	W. P. Smith	294	Wat Wilson
289	J. Kemper	296	M. Maher	297	P.J. Delahay	298	W.J. Davis	299	H. C. Howard	300	Mrs Gosler
295	P.H. Garaghty	302	F.D. Brown	303	H. Smith	304	Emma Taylor	305	Sam Smith	306	Lizzie Smith
301	Wm. Allen	308	Mrs Hardy	309	Calvin Davis	310	T.H. Jones	311	H.T. Rock	312	Jno Davis
307	John Willis	314	Nancy Murphy	315	A Morris	316	Hannah Robinson	317	Charlie Williams	318	Geo Johnson
313	Henry Grimm	320	P.E. Hoyge	321	T.W. Lee	322	J.C. Stanton	323	J.C. Moore	324	A.D. Shelton
319	Geo Frey	326	Alexander Peeples	327	Ferdinand Keelon	328	Jas M. Cowan	329	John M. Lead	330	Angeles Menighall
325	Evans Wright	332	Pleasant Murphy	333	Criswell Murphy	334	Jesse Gray	335	John Carter	336	Felix Mackado
331	Richd Hill	338	Jas Harris	339	J.R. Robinson	340	Mr Booth	341	Louis Lynch	342	Sumi Preak
337	Joshua Crawford	344	K. Lynch	345	W.C. Shields	346	Jas Porter	347	W.H. Lewis	348	Willis McLeod
343	Levi Chatman	350	E.W. Rector	351	Smith Scoggin	352	John Gable	353	E.G. Smith	354	W. Platta
349	W.M. Rector Jr.	356	Wilmer M. Mooney	357	Chester Kingsbury	358	O. Smith	359	King Mooney	360	Wilmer Kingsbury
355	Ralt Mooney	362	J.P. Bryant	363	John W. Preston	364	C. Smith	365	H. Latta	366	G.G. Latta
361	John A. Watkins	368	Ada Cayce	369	J.J. Stumpter	370	C. Smith	371	Pat Carmody	372	Robt A. Brunson
367	Mary A Cayce	374	John Tobin	375	J.P. Lowry	376	J.C. Colehern	377	Harry Harrison	378	J.W. Jordan
373	J.P. Grant	380	Mr. Pipkins	381	Daniel Reed	382	J.R. Hood	383	Jno Fisher	384	A.M. Thompson
379	A.V. Beard	386	L.L. Butterfield	387	J. Cagnick	388	J.A. Clure	389	J.J. Sutton	390	P. Barnes
385	A.H. Burley	392	T.J. Saxman	393	Aaron Smith	394	Davis & Dale	395	Harriet Upton	396	John Alexander
391	H.H. Seay	398	Mr. Rose	399	Wm. Gardenshire	400	W.S. Summers	401	Jas Hills	402	Wm Terry
397	Geo Cate	404	Thos Haskins	405	Oliver Nelsum	406	Archer Haskins	407	Melinda Ross	408	Fancy L. Box
403	Wm Haskins	410	Mr. Livingstone	411	J.T. Baker	412	Joe Wetz Lee	413	Marcus Horne	414	Jas Barnes
409	Mr Garner	416	Alex Stoneham	417	Mary Ware	418	Emily Meredith	419	Rebecca Crow	416	Daniel Dawson
415	Isabella Hogdon	422	Hiram Harvey	423	W. Wallington	424	Jack Collin	425	Henry Ware	426	Mrs Heller
421	Malvena Taylor	428	W.P. Walsh	429	Mathilda Lipscomb	430	S.H. Tevitt & Co	431	Jno Hutchinson	432	Asa Ingram
427	T. Linde	434	Sam Davis	435	Augustus Thrusser	436	Jesse Nutley	437	O.L. Tannar	438	Sam Bellamy
433	Hosea Jones	440	Mrs Smith	441	Jas Cate	442	Frank Barnes	443	Jas Leathers	444	Mr Gardiner
439	Chas Caughman	446	W.A. Swirls	447	Jonathan Wilks	448	J.C. Tammel	449	H.L. Wells	450	Mr. McCreary
445	Spencer Epps	452	R.M. Williams	453	Mrs Harris	454	Mrs. Harris	455	Morgan Puckett	456	Harris Boswell
451	Amanda Bryant	458	Mrs Amelia Keeler	459	Nancy Hill	460	J.H. Spence	461	A.W. Brantley	462	J.F. Tackett
457	Polk Wisk	464	John Gillet	465	A.S. Woodcock	466	Mr. Calhoun	467	Mr. Davis	468	T. Bryant
463	Henry Keeble	470	Rector Bouse Tudor	471	A.W. Lawrence M.D	472	J.P. Robertson	473	H.P. Belden	474	Amy C. Nelson
469	Jas T. Jordan	476	Adin E. Hartmore	477	Jas T. Walls	478	Brutus Carter	479	Mark George	480	Parker Institute
475	John Wheaton	482	Geo Reheny	483	Wm. Stedham	484	Geo Hall				
481	John Parker										

We certify that the above Map of the Hot Springs Reservation is correct and drawn in strict conformity with the field notes of our survey thereof.

Hot Springs Ark
Oct 10th 1875.

Geo. Mc French C.E. & Surveyor
E.A. Douglas C.E. & Topographer

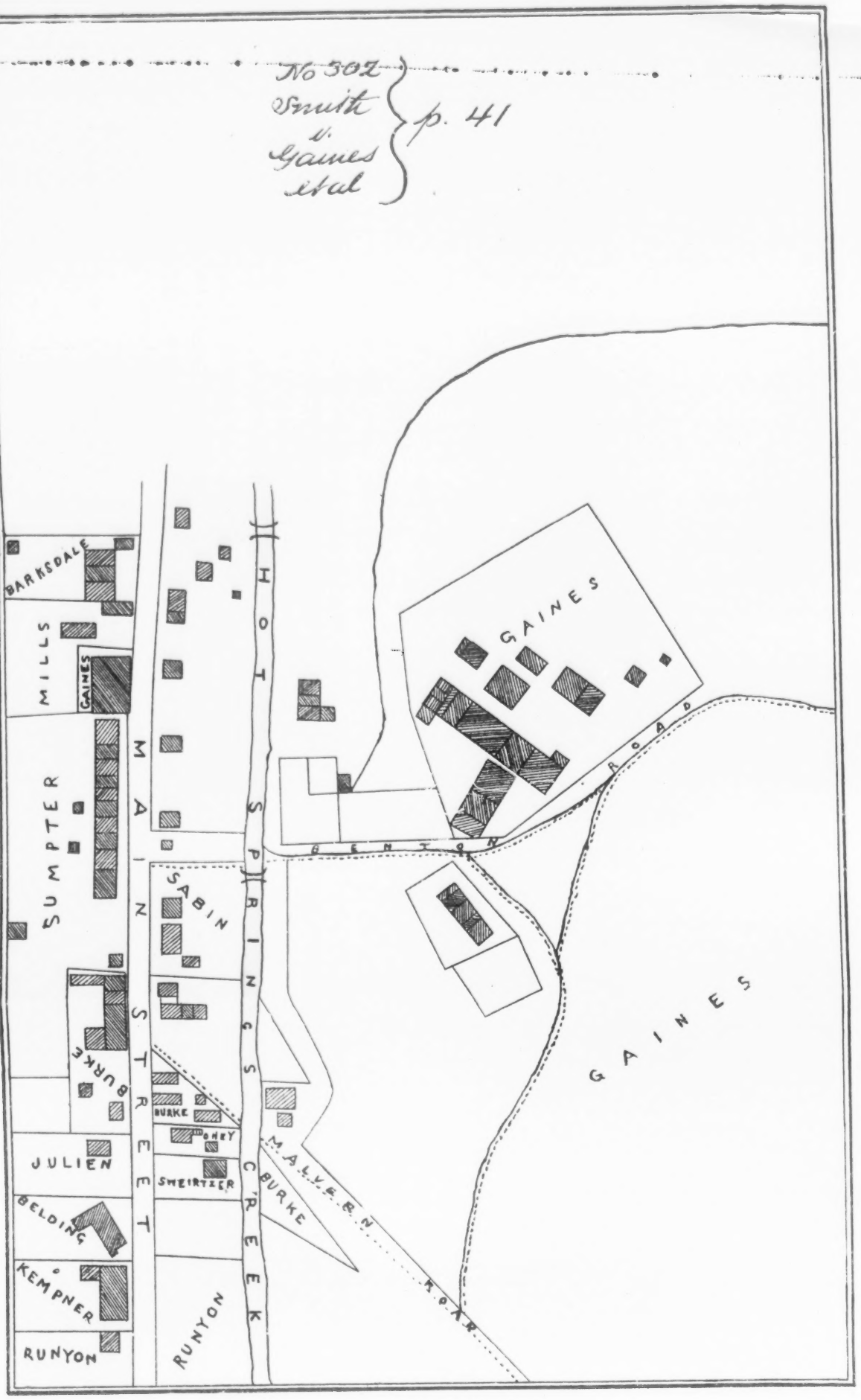
MAP A



W. H. Gaines'

CLAIM

No 302
Smith
v.
Gaines
et al
} p. 41



MAP SHOWING OLD IMPROVEMENTS

PLAT OF
WM. H. GATINES CLAIM
S½ of S.W¼ of Sec. 33, T. 2 S., R. 19 W.

No. 302 Smith v. Gaines et al. p. 42

R. L. WILSON
BAXTER & WARE
MAZZETTI
BAIRD
MAGRATH
FLOWERS
P. HORTON
P. E. CHURCH
W. H. NELSON
CEMETERY
McGOVAN
W. CARHART
D. C. CASEY
BOOTH
NASSEE
TUNSTALL
RITCHIE
GROVER

STREET
CREEK
VALLEY
SPRINGS
ROAD
BENTON
GAINES
AVENUE

MAP "B"

MAP "B"

PLAT OF
WM. H. GATNES CLAIM
S½ of S.W¼ of Sec. 33, T. 2 S., R. 19 W.

No. 303
Augusta
Davies
Estate
Pp. 56

L. MCGOVAN

R. L. WILSON

BAXTER & WARE

ALLEY

RALSTON

BAIRD

STREET

CREEK

P. E. CHURCH

W. H. NELSON

MCGRATH

ALLEY

FLOWERS

P. HORTON

SPRINGS

STONE

BENTON ROAD

L. MOLEN

CEMETERY

GAINES

W. CARHART

D. C. CASEY

AVENUE

BOOTH

NASSEE

TUNSTALL

RITCHIE

RITCHIE

RITCHIE

BOOTH

CROVER

MAP "B"

MAP "B"

PLAT OF

W M L H GATNES CLAIM

S½ of S.W¼ of Sec.33, T.2 S, R.19 W.

R.L. WILSON

BAXTER & WAKE

MAZZETTI

BAIRD

P.E. CHURCH

W. H. NELSON

J. NOLEN

M.C. CASEY

Rd. to Baird & Gaines Ests.

L. MCGOWAN

M.E. CHURCH

MEGRATH

FLOWERS

P. NORTON

CEMETERY

BOOTH

NASSEE

TUNSTALL

RITCHIE

RITCHIE

GROVER

BOOTH

RITCHIE

STREET

SPRINGS

STREET

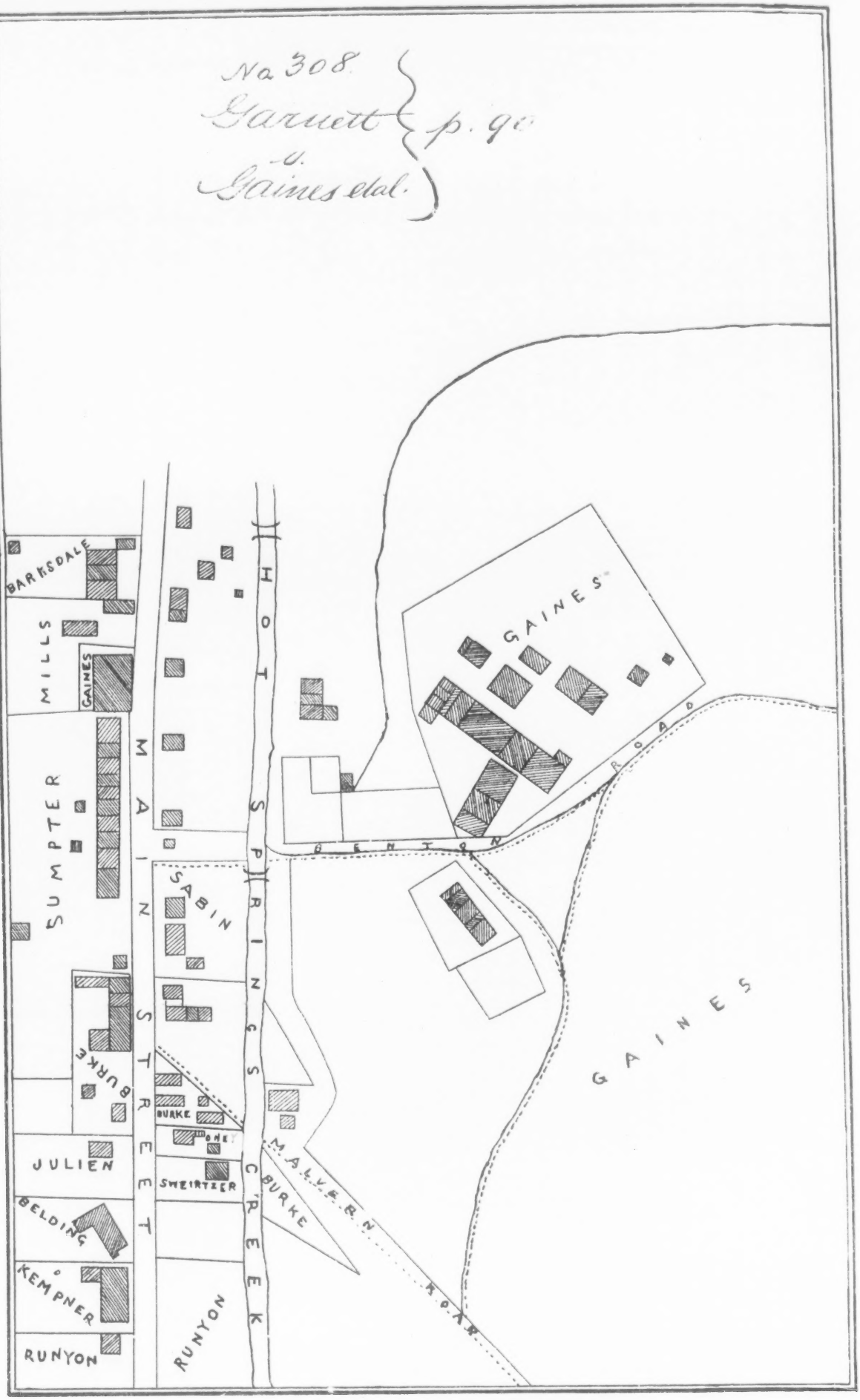
BENTON ROAD

GAINES AVENUE

MAP "B"

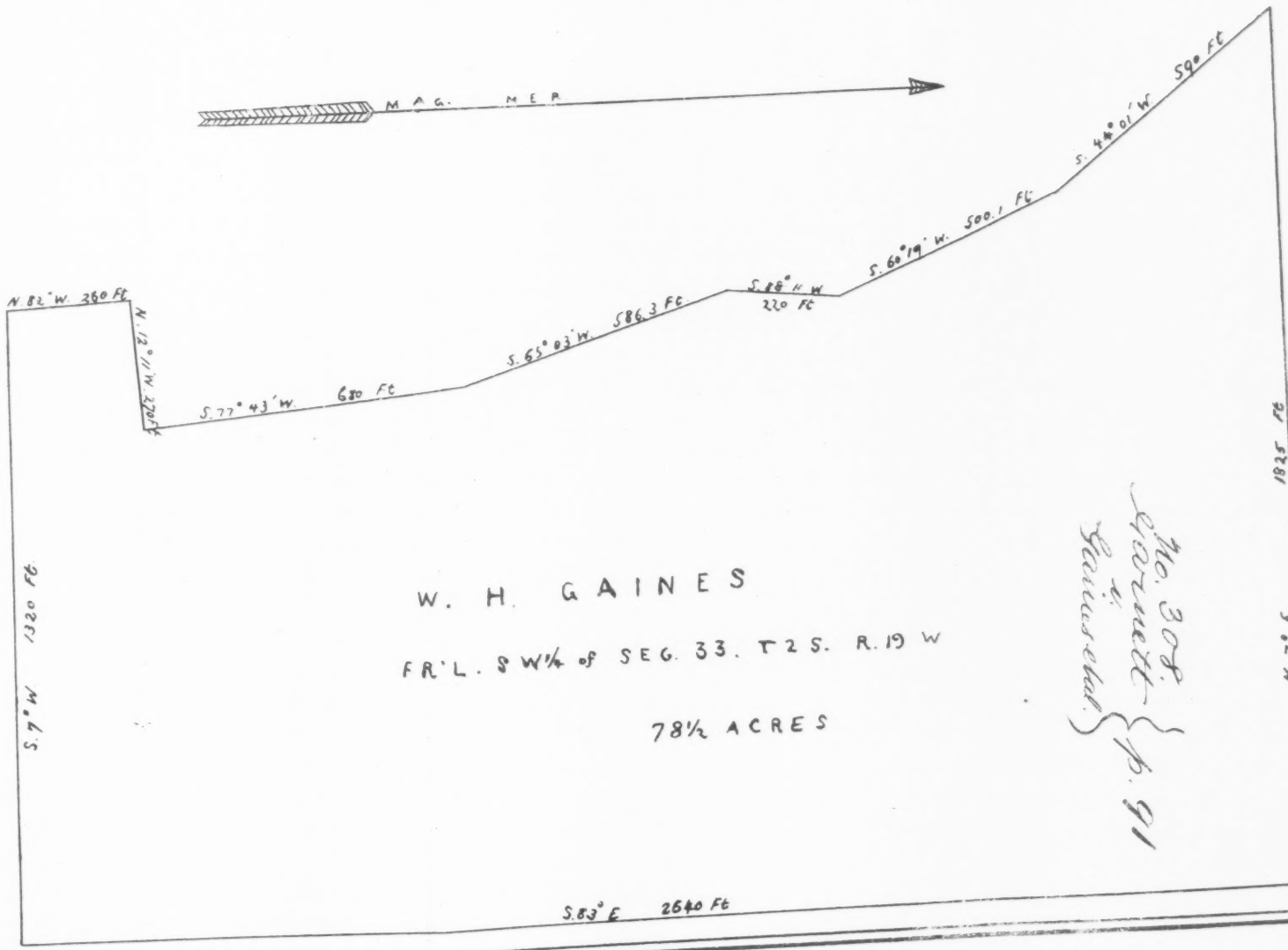
MAP "B"

No 308
Garnett
v.
Gaines et al.
p. 90

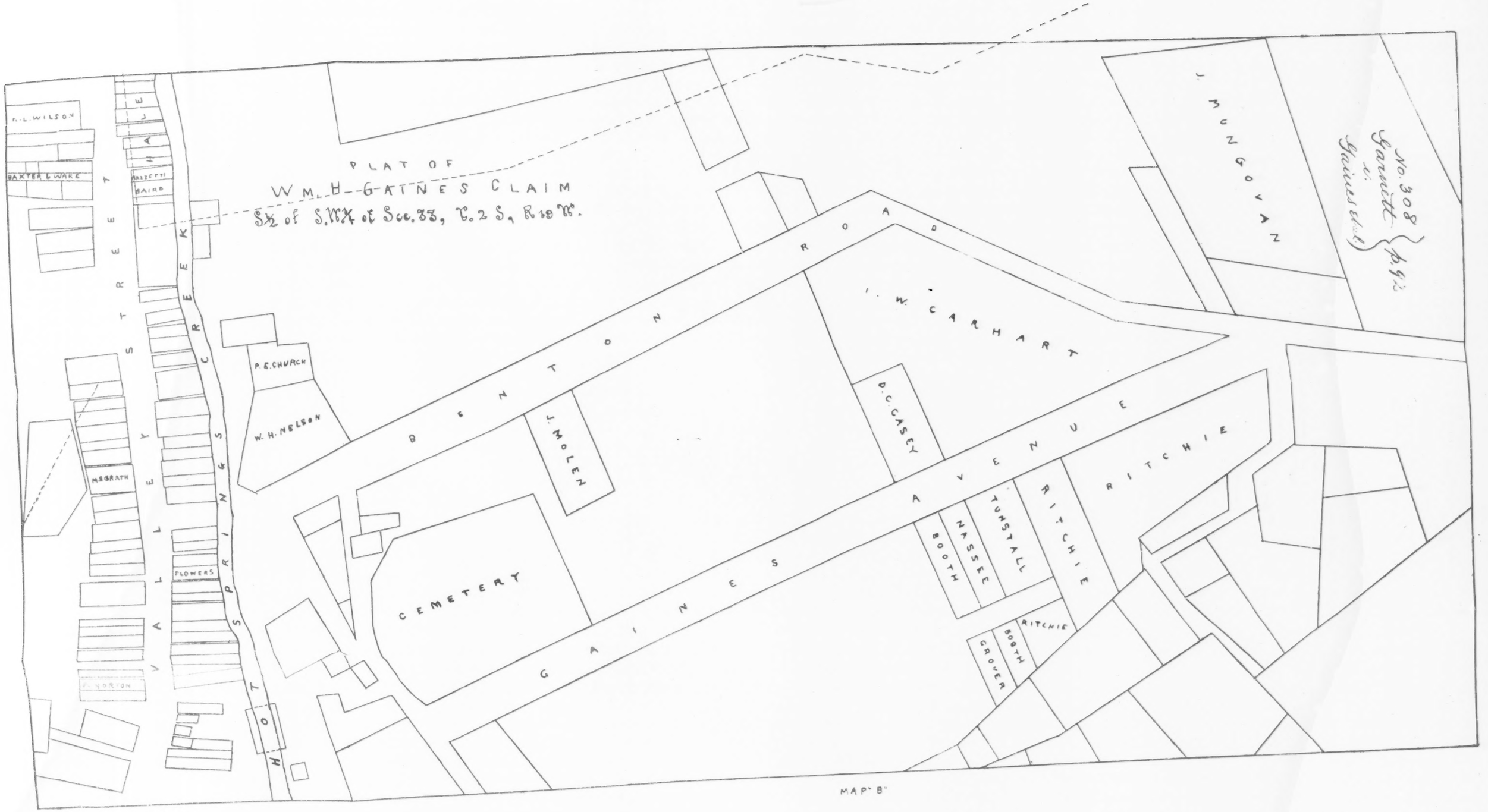


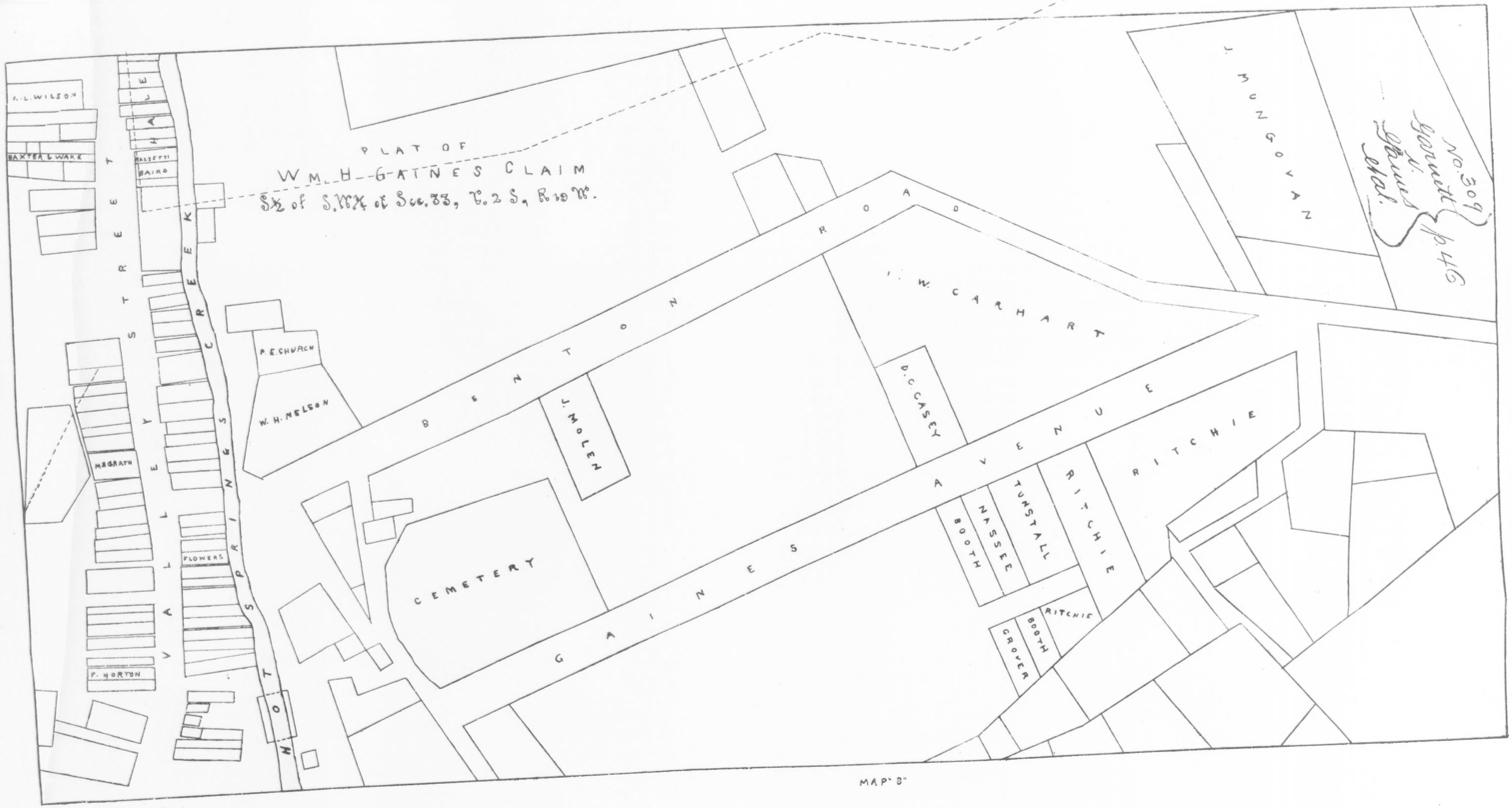
MAP SHOWING OLD IMPROVEMENTS

MAP A

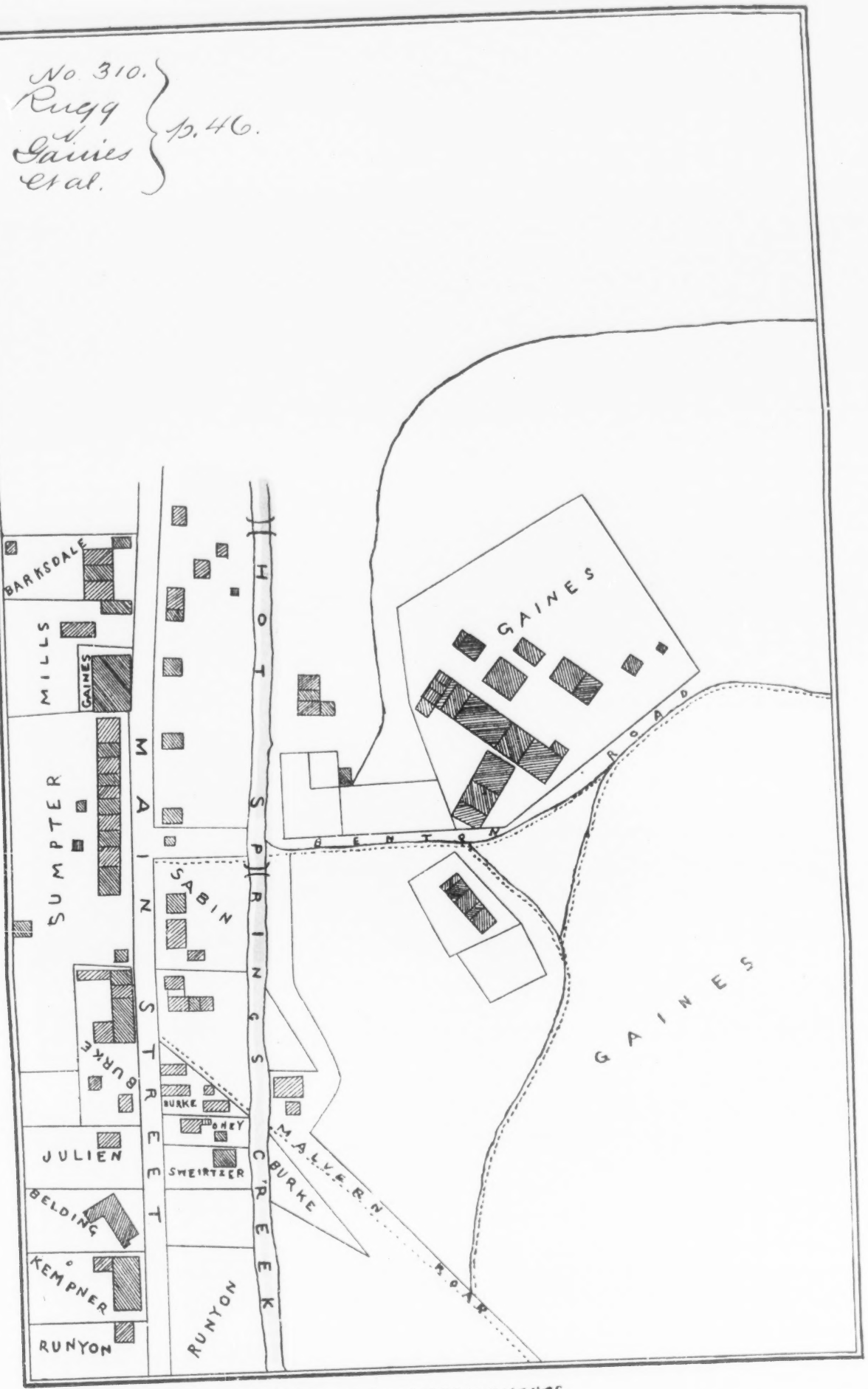

MAG. MER
N. 82° W. 380 Ft
N. 12° 11' W. 320 Ft
S. 77° 43' W. 680 Ft
S. 63° 03' W. 586.3 Ft
S. 58° 11' W. 220 Ft
S. 60° 19' W. 500.1 Ft
S. 44° 01' W. 590 Ft
1825 Ft
N. 7° E.
S. 7° W. 1320 Ft
S. 83° E. 2640 Ft
W. H. GAINES
FR'L. S W¼ of SEC. 33. T 2 S. R. 19 W
78½ ACRES
No. 308. Corvallis Ps. 91 Feb. 1908.

W. H. Gaines'
CLAIM


PLAT OF
WM. H. GATNES CLAIM
S½ of S.W¼ of Sec. 33, T. 2 S., R. 19 W.
No. 308
Garrett
et al
(Gaines et al)
F. L. WILSON
BAXTER & WARE
MAZZETTI
BAIRD
MAGRATH
P. NORTON
FLOWERS
P. E. CHURCH
W. H. NELSON
J. MOLEN
CEMETERY
D. C. CASEY
H. CARHART
BOOTH
NASSEE
TUNSTALL
RITCHIE
RITCHIE
RITCHIE
GROVER
BOOTH
RITCHIE
BENTON ROAD
GAINES AVENUE
SPRINGS STREET
VALLEY STREET
CREEK STREET
MAP "B"
MAP "B"


PLAT OF
WM. H. GAINES CLAIM
S½ of S.W¼ of Sec. 33, T. 2 S., R. 19 W.
No. 309
Garrett
vs.
Gaines
et al.
p. 46
F. L. WILSON
BAXTER & WARE
BALTEFFY
BAIRD
STREET
VALLEY
CREEK
SPRINGS
STATION
P. E. CHURCH
W. H. NELSON
McGRATH
FLOWERS
P. HORTON
BENTON
ROAD
J. MOLEN
CEMETERY
GAINES
AVENUE
D. C. CASEY
W. CAMARA
McGOVAN
BOOTH
NASSEE
TUNSTALL
RITCHIE
RITCHIE
RITCHIE
BOOTH
GROVER
MAP "B"
MAP "B"

No 310.
Rugg
&
Gaines
et al.
} p. 46.

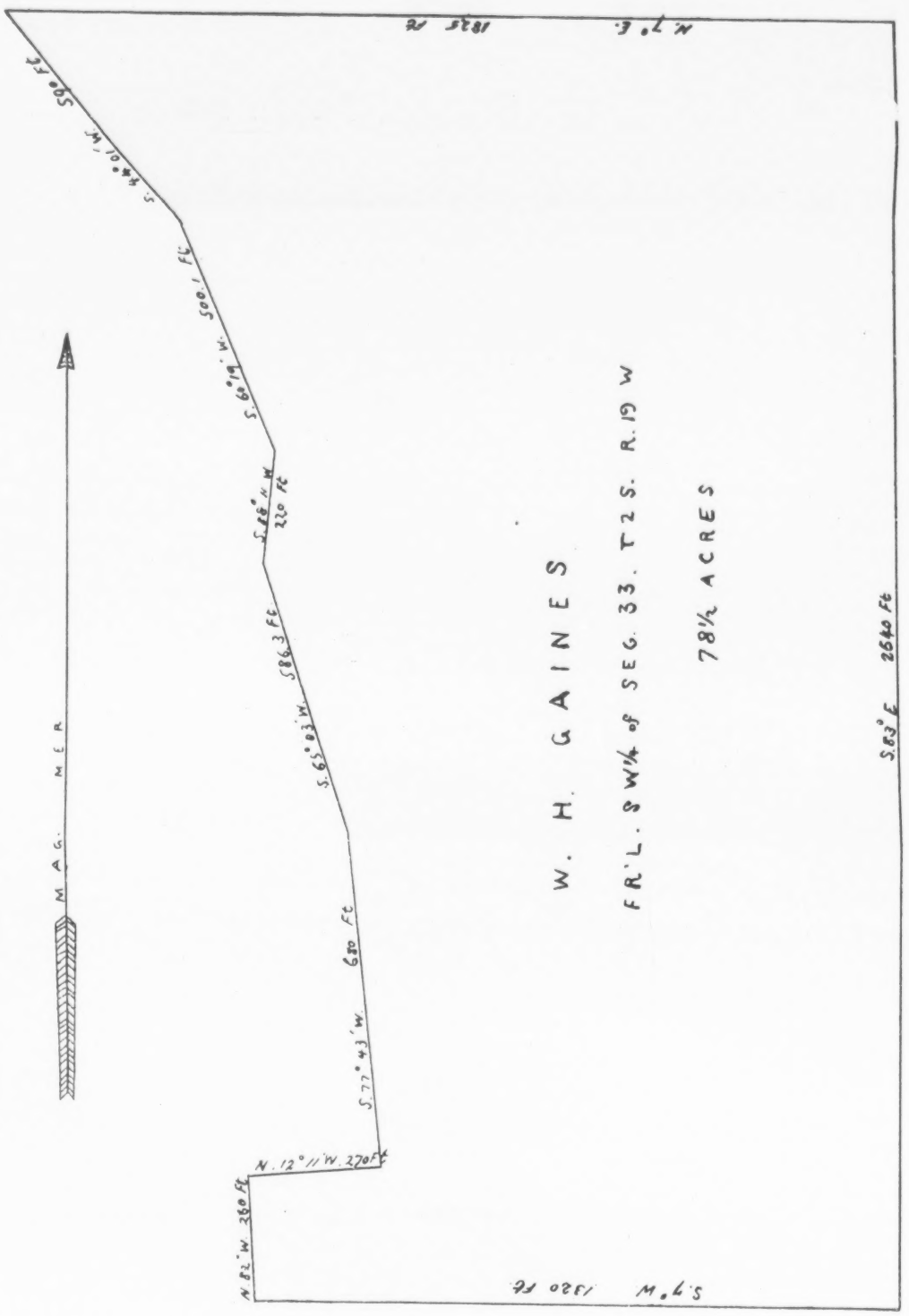


MAP SHOWING OLD IMPROVEMENTS

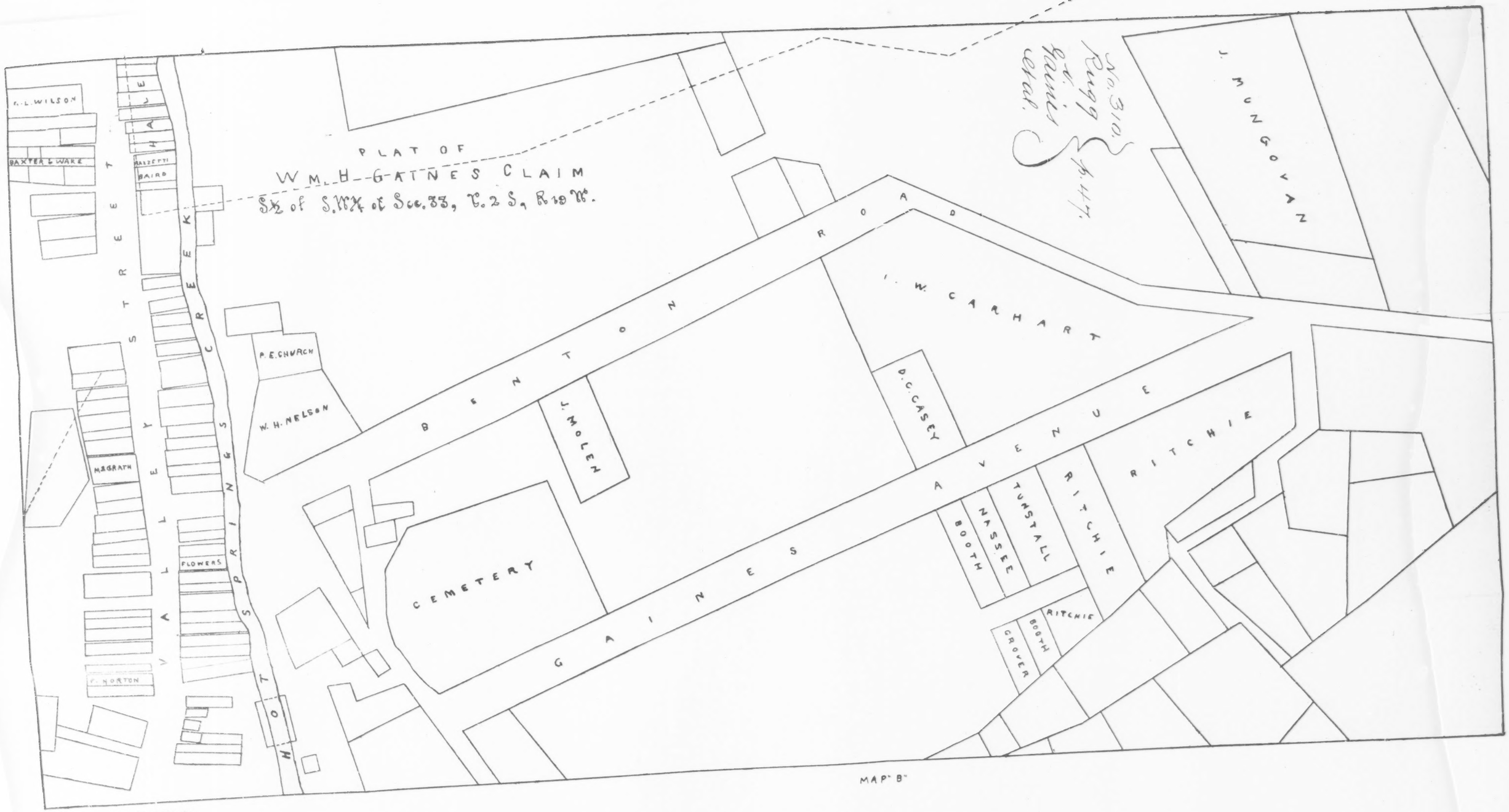
No. 310.
Rugg
v.
Gaines et al.
} p. 45.

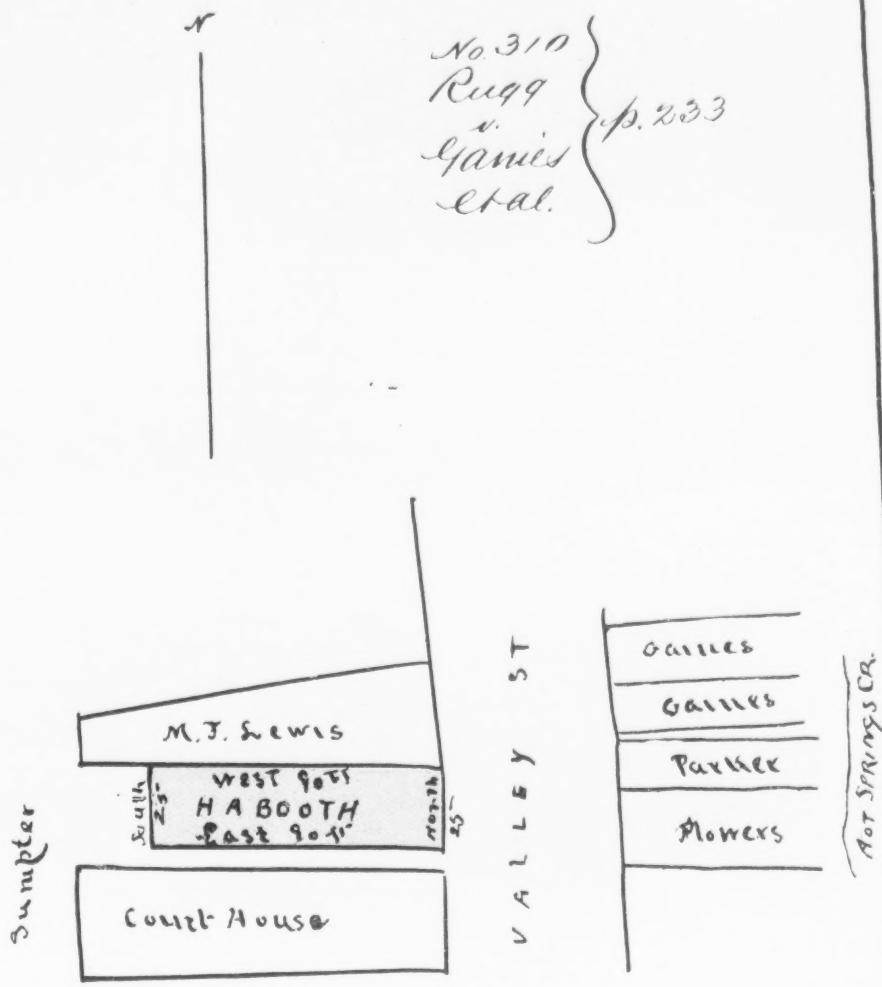
W. H. Gaines'

CLAIM


N. 7° E. 1835 ft
S. 83° E. 2640 ft
S. 7° W. 1320 ft
N. 82° W. 360 ft
N. 12° 11' W. 270 ft
S. 77° 43' W. 620 ft
S. 65° 03' W. 863 ft
S. 28° W. 220 ft
S. 60° 19' W. 500.1 ft
S. 44° 01' W. 550 ft
M. A. G. MER
W. H. GAINES
FR'L. S W¼ of SEC. 33. T 2 S. R. 19 W
78½ ACRES

MAP A


PLAT OF
WM. H. GATNES CLAIM
S½ of S.W¼ of Sec. 33, T. 2 S., R. 19 W.
No. 310 Pueblo Grants
R. L. WILSON
BAXTER & WARE
MALZETTI
BAIRD
MAIN STREET
CREEK
P. E. CHURCH
W. H. NELSON
McGRATH
FLOWERS
F. NORTON
VALLEY STREET
SPRINGS
SOUTH
BENTON ROAD
J. MOLEN
CEMETERY
GAINES AVENUE
D. C. CASEY
W. CARHART
McGOVAN
BOOTH
NASSEE
TUNSTALL
RITCHIE
RITCHIE
GROVER
BOOTH
RITCHIE
MAP "B"
MAP "B"



CLAIM

OF

HENRY. A BOOTH

SW¼ SW¼ Sec 33,

T. 2, S. R 19 W

Scale 50 ft to an Inch

PLAT OF

WM. H. GAINES CLAIM

S½ of S.W¼ of Sec. 33, T. 2 S, R. 1 W.

R. L. WILSON

BAXTER & WARE

MAZZETTI

BAIRD

STREET

CREEK

P. E. CHURCH

W. H. NELSON

J. MOLEN

D. C. CASEY

M. GRATH

FLOWERS

P. HORTON

VALLEY

SPRINGS

HOT

BENTON ROAD

CEMETERY

GAINES AVENUE

M. CAHART

LINCOLN

BOOTH

NASSEE

TUNSTALL

RITCHIE

RITCHIE

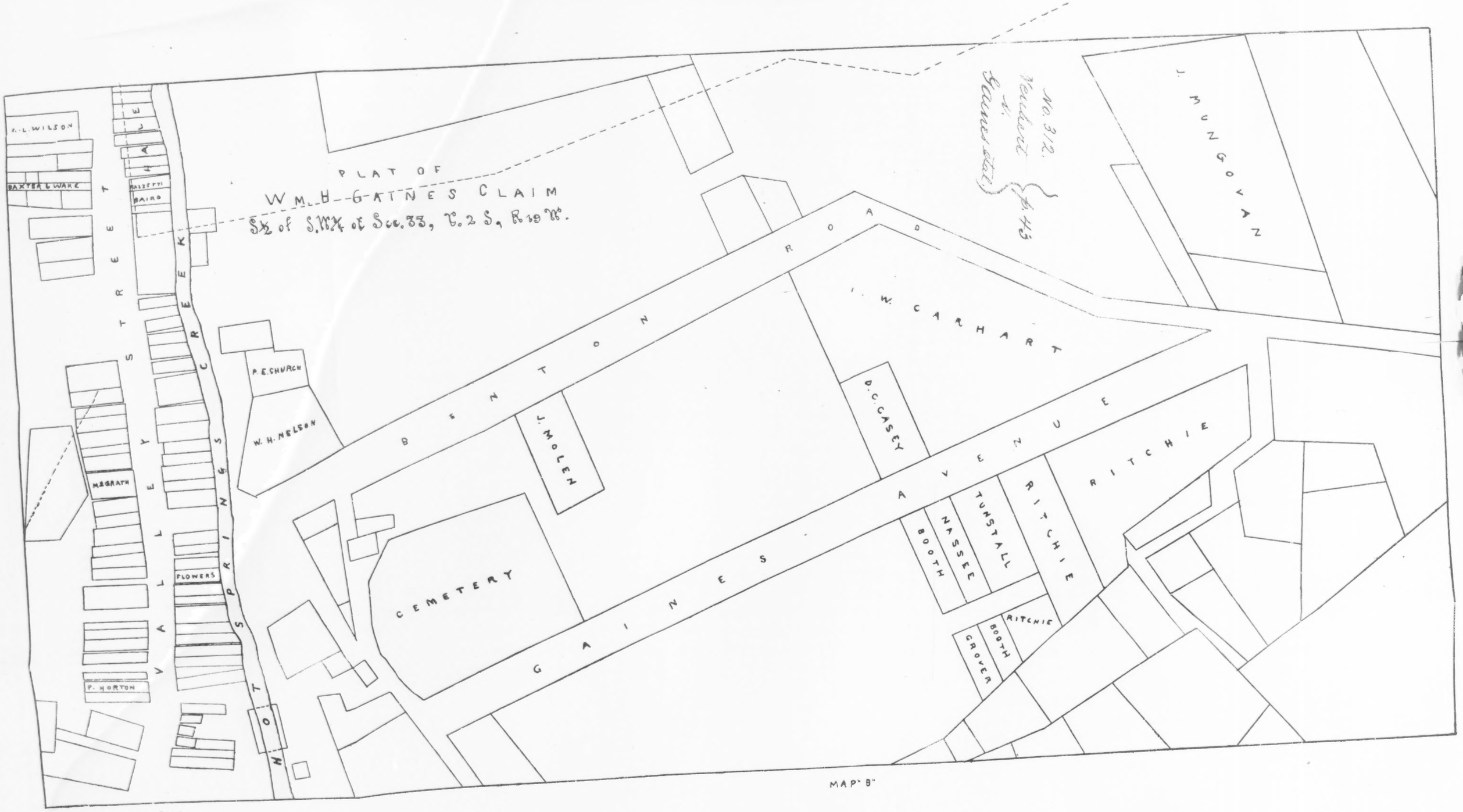
BOOTH

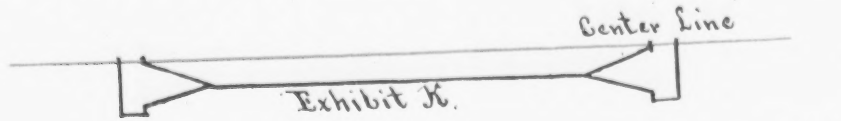
GROVER

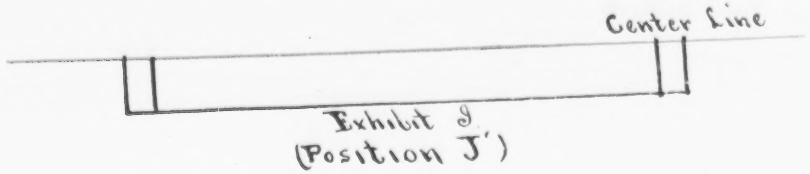
No. 311
Granger
et al
Gaines et al
p. 114

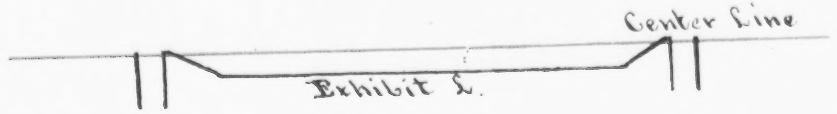
MAP "B"

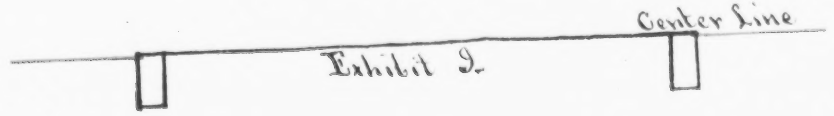
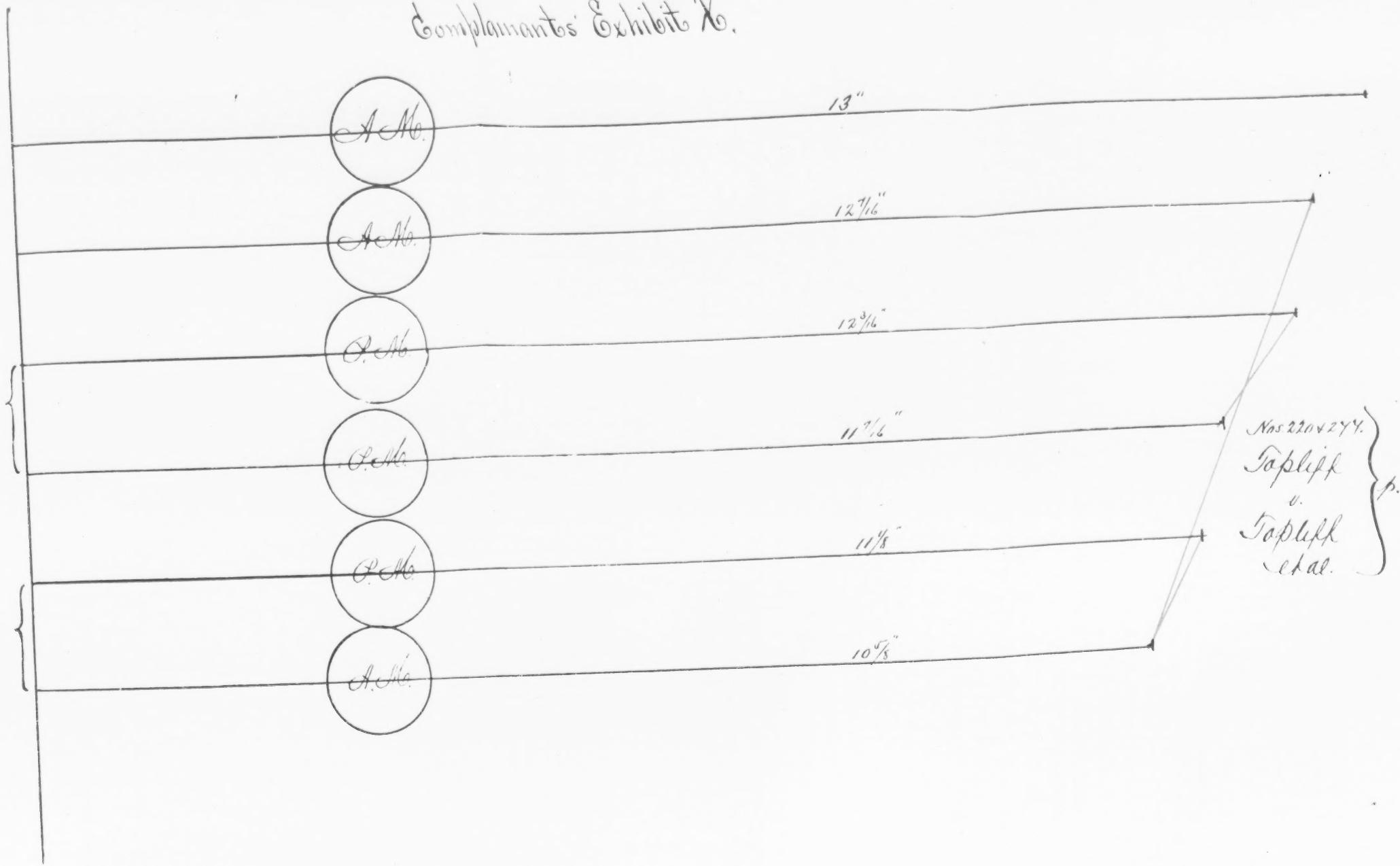
MAP "B"


PLAT OF
WM. H. GAINES CLAIM
S½ of S.W¼ of Sec. 33, T. 2 S., R. 18 W.
No. 312.
Feb. 4.
Recorded Vol. 43
Records 427
R. L. WILSON
BAXTER & WARE
BALDWIN
BAIRD
P. E. CHURCH
W. H. NELSON
McGRATH
FLOWERS
F. HORTON
J. NOLEN
CEMETERY
D. C. CASEY
W. CAHART
BOOTH
NASSEE
TUNSTALL
RITCHIE
RITCHIE
RITCHIE
BOOTH
GROVER
STREET
VALLEJO
CRESTA
CREEK
SPRINGS
BENTON
ROAD
GAINES
AVENUE
MAP "B"
MAP "B"









Complainants' Exhibit No.